

## SAMOA

### Arrangement of Provisions

#### PART I PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Public notice
4. Solvency test
5. Act binds the State

#### PART II INCORPORATION AND NAMES

6. Application for incorporation
7. Certificate of incorporation
8. Effect of incorporation
9. Registration as private company or public company
10. Name of company
11. Change of name
12. Direction to change name
13. Use of company name

#### PART III ARTICLES OF INCORPORATION

14. Adoption and alteration of Articles
15. Model Articles
16. Contents and effect of Articles

#### PART IV SHARES

17. Rights and powers attached to shares
18. Shares must not impose liabilities on holder
19. Issue of initial shares
20. Issue of other shares
21. Time of issue of shares
22. Distributions prohibited unless solvency test satisfied
23. Recovery of improper distributions
24. Dividends
25. Company may acquire its own shares
26. Cancellation of shares acquired by company
27. Enforcement of contract to repurchase shares
28. Redeemable shares
29. Redemption of redeemable shares
30. Financial assistance
31. Cross-holdings
32. Transfer of shares
33. Transfer of shares by operation of law
34. Company to maintain share register
35. Share register as evidence of legal title

- 36. Power of court to rectify share register
- 37. Trusts not to be entered on register
- 38. Registration of personal representative or assignee of bankrupt
- 39. Share certificates
- 40. Legal nature of shares
- 41. No nominal value
- 42. Minimum number of shares

**PART V  
SHAREHOLDERS AND  
THEIR RIGHTS AND  
OBLIGATIONS**

- 43. Liability of shareholders
- 44. Decisions which must be made by shareholders
- 45. Decisions which may be made by shareholders
- 46. Shareholder approval of major transactions
- 47. Unanimous shareholder approval
- 48. Shareholder written resolutions
- 49. Shareholder meetings
- 50. Alteration of shareholder rights
- 51. Repurchase of dissenter's shares
- 52. Annual report to shareholders
- 53. Inspection of company records by shareholders
- 54. Other information for shareholders
- 55. Investigation at request of shareholder
- 56. Every company must have at least one shareholder

**PART VI  
DIRECTORS AND THEIR  
POWERS AND DUTIES**

- 57. Meaning of "director"
- 58. Management of company
- 59. Fundamental duties of directors
- 60. Duty of directors to comply with Act
- 61. Duty of directors to comply with Articles
- 62. Interest of director in company transactions
- 63. Use and disclosure of company information
- 64. Standard of care of directors
- 65. Obligations of directors in connection with insolvency
- 66. Effect of unanimous shareholder approval on certain duties of directors
- 67. Qualifications of directors
- 68. Appointment of directors
- 69. Director ceasing to hold office
- 70. Notice of change of directors
- 71. Persons deemed to be directors for liability purposes
- 72. Certain indemnities prohibited
- 73. Company may indemnify or insure directors
- 74. Remuneration of directors
- 75. Proceedings of directors

**PART SEVEN  
ENFORCEMENT**

- 76. Injunctions to require compliance with Act and Articles
- 77. Derivative actions
- 78. Personal actions by shareholders against company
- 79. Personal actions by shareholders against directors

- 80. Representative actions
- 81. Prejudiced shareholders
- 82. Certain conduct deemed prejudicial
- 83. Alteration to Articles by Court
- 84. Effect of arbitration clause in Articles
- 85. Application for relief by Attorney-General

**PART VIII  
DEALINGS WITH THIRD  
PARTIES**

- 86. Authority to bind company
- 87. Attorneys
- 88. Validity of dealings with third parties
- 89. Assumptions that may be made by third parties
- 90. Transactions in which directors are interested
- 91. Transactions entered into by directors in breach of certain duties
- 92. Effect on third parties
- 93. Pre-incorporation contracts may be ratified
- 94. Warranties implied in pre-incorporation contracts
- 95. Failure to ratify

**PART IX  
COMPANY RECORDS**

- 96. Company records
- 97. Form of records
- 98. Alternative locations of records
- 99. Inspection of records by directors
- 100. Inspection of records by shareholders
- 101. Inspection of records by public

- 102. Manner of inspection, copies etc.

**PART X  
DOCUMENTS TO BE SENT  
TO THE REGISTRAR**

- 103. Annual returns
- 104. Other documents to be sent to the Registrar

**PART XI  
DOCUMENTS TO BE SENT  
TO SHAREHOLDERS**

- 105. Annual report to shareholders
- 106. Other documents to be sent to shareholders

**PART XII  
REGISTERED OFFICE**

- 107. Registered office
- 108. Change of registered office
- 109. Requirement to change registered office

**PART XIII  
ACCOUNTING AND AUDIT**

- 110. Accounting records to be kept
- 111. Financial statements to be prepared
- 112. Appointment of auditor
- 113. Qualifications of auditor
- 114. Statement by auditor in relation to resignation or removal
- 115. Auditor to avoid conflict of interest
- 116. Auditors report
- 117. Access to information
- 118. Auditor's attendance at shareholders' meeting

**PART XIV  
AMALGAMATIONS**

- 119. Amalgamations
- 120. Notice to creditors etc of proposed amalgamation
- 121. Registration of amalgamation proposal
- 122. Certificate of amalgamation
- 123. Effect of certificate of amalgamation
- 124. Registers
- 125. Powers of Court in relation to amalgamations

**PART XV  
COMPROMISES WITH  
CREDITORS**

- 126. Interpretation
- 127. Compromise proposal
- 128. Notice of proposed compromise
- 129. Effect of compromise
- 130. Variation of compromise
- 131. Powers of Court
- 132. Effect of compromise in liquidation of company
- 133. Costs of compromise

**PART XVI  
APPROVAL OF ARRANGEMENTS ETC. BY COURT**

- 134. Interpretation
- 135. Approval of arrangements, amalgamations, and compromises
- 136. Court may make additional orders
- 137. Application of section 132

**PART XVII  
REMOVAL FROM  
REGISTER**

- 138. Removal from register

- 139. Grounds for removal from register
- 140. Notice of intention to remove where company has ceased to carry on business
- 141. Notice of intention to remove in other cases
- 142. Objection to removal from register
- 143. Duties of Registrar if objection received
- 144. Powers of Court
- 145. Property of company removed from register
- 146. Disclaimer of property by the State
- 147. Liability of directors, shareholders, and others to continue
- 148. Liquidation of company removed from Samoa register
- 149. Registrar may restore company to Samoa register
- 150. Court may restore company to Samoa register
- 151. Restoration to register
- 152. Vesting of property in company on restoration to register

**PART XVIII  
OVERSEAS COMPANIES**

- 153. Meaning of “carrying on business”
- 154. Name must comply with section 10
- 155. Overseas companies to register under this Act
- 156. Validity of transactions not affected
- 157. Application for registration
- 158. Registration of overseas company
- 159. Use of name by overseas company

- 160. Further information to be provided by overseas
- 161. Annual return of overseas company
- 162. Overseas company ceasing to carry on business in Samoa
- 163. Liquidation of assets in Samoa
- 164. Attorneys of overseas companies

**PART XIX  
TRANSFER OF  
REGISTRATION**

- 165. Overseas companies may be registered as companies under this Act
- 166. Application for registration
- 167. Overseas companies must be authorised to register
- 168. Overseas companies that cannot be registered
- 169. Registration
- 170. Effect of registration
- 171. Companies may transfer incorporation
- 172. Application to transfer incorporation
- 173. Approval of shareholders
- 174. Company to give public notice
- 175. Companies that cannot transfer incorporation
- 176. Removal from register
- 177. Effect of removal from register

**PART XX  
REREGISTRATION OF 1955  
ACT COMPANIES**

- 178. Period for reregistration
- 179. Articles of reregistered company

- 180. Documents to be filed
- 181. Effect of reregistration
- 182. Liability of reregistered company for outstanding amounts under 1955 Act
- 183. Failure to reregister

**PART XXI  
REGISTRAR**

- 184. Registrar and Deputy Registrars of Companies
- 185. Registers
- 186. Registration of documents
- 187. Power of Registrar to require information and copies of documents
- 188. Inspection and evidence of registers
- 189. Notices by Registrar
- 190. Registrar's powers of inspection
- 191. Disclosure of information and reports
- 192. Appeals from Registrar's decisions
- 193. Fees

**PART XXII  
OFFENCES AND PENALTIES**

- 194. Penalty for failure to comply with Act
- 195. Penalties that may be imposed on directors personally
- 196. Defences for directors
- 197. Proceedings for offences
- 198. False statements
- 199. Fraudulent use or destruction of company property
- 200. Falsification of records
- 201. Carrying on business fraudulently

**PART XXIII  
PROHIBITION AND  
DISQUALIFICATION OF  
DIRECTORS**

202. Persons prohibited from managing companies  
203. Court may disqualify directors  
204. Disqualification of persons who contribute to company failure from managing companies  
205. Liability for contravening sections 202 or 203 or 204

**PART XXIV  
REPEALS AND  
AMENDMENTS**

206. Repeal of Companies Act 1955

**PART XXV  
MISCELLANEOUS**

207. Service of documents on companies in legal proceedings  
208. Service of other documents on companies  
209. Service of documents on overseas companies in legal proceedings  
210. Service of other documents on overseas companies  
211. Service of documents on shareholders and creditors  
212. Additional provisions relating to service  
213. Privileged communications  
214. Regulations

Schedules

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**2001, No. 6**

**AN ACT to provide for the formation and governance of  
Companies in Samoa.** *[20<sup>th</sup> June 2001]*

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

**PART I  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Companies Act 2001.

(2) This Act comes into force on a date appointed by the Minister, by notice published in the Savali.

(3) The Registrar must give public notice of the date on which the Act comes into force.

**2. Interpretation-** (1) In this Act, unless the context otherwise requires:

“administrator” means a person appointed as administrator of the affairs of a company under legislation establishing a voluntary administration regime applicable to companies in Samoa:

“Articles” means the articles of incorporation of a company:

“company” means a company incorporated or reregistered under this Act:

“Court” means the Supreme Court:

“director” has the meaning set out in section 57:

“distribution”, in relation to a distribution by a company to a shareholder, means -

- (a) The direct or indirect transfer of money or property, other than the company’s own shares, to or for the benefit of the shareholder; or
- (b) The incurring of a debt to or for the benefit of the shareholder -

in relation to shares held by that shareholder, whether by means of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or some other means:

“document” means a document in any form, and includes—

- (a) Any writing on any material;
- (b) Information recorded or stored by means of a tape-recorder, computer, or other device, and material subsequently derived from information so recorded or stored;
- (c) A book, graph, or drawing;
- (d) A photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“existing company” means a body corporate registered or deemed to be registered under Part II or Part X of the Companies Act 1955 , or under the Companies Act 1933, the Companies Act 1908, the Companies Act 1903, the Companies Act 1882, or the Joint Stock Companies Act 1860:

- “liquidator” means a person appointed to conduct the liquidation of a company under legislation governing the liquidation or winding up of companies in Samoa:
- “major transaction” has the meaning set out in section 46(2):
- “model Articles” means the model articles of incorporation set out in the First, Second and Third Schedules:
- “Minister” means the Minister responsible for the Department of Justice:
- “overseas company” means a corporation that is incorporated outside Samoa, whether or not it is registered under Part XVIII:
- “overseas register” means the register kept by the Registrar under section 185(1)(b):
- “prescribed” means prescribed in regulations made under this Act:
- “private company” means a company which is registered as a private company on the Samoa register:
- “public accountant” means a public accountant within the meaning of the Public Accountants Act 1984:
- “public company” means a company which is registered as a public company on the Samoa register:
- “registered charge” means a charge in respect of property of a company which is registered under any Act other than the Land Registration Act 1992/1993 which provides for registration of charges or other security interests:
- “registered office”, in relation to a company, has the meaning set out in section 107:
- “Registrar” means the Registrar of Companies appointed under section 184:
- “Samoa register” means the register kept by the Registrar under section 185(1)(a):
- “Secretary” means the Secretary of Justice:
- “shareholder” means a person whose name is entered on the share register of a company as the holder of one or more shares in the company:



“solvency test” means the solvency test referred to in section 4:

“special resolution” means a resolution -

- (a) Approved in accordance with section 48; or
- (b) Approved at a meeting of shareholders called to consider that resolution on not less than 10 working days’ notice:
  - (i) by a majority of 75% (or such higher majority as may be specified in the Articles) of the votes of shareholders entitled to vote and voting on the question; and
  - (ii) in accordance with any additional requirements specified in the Articles in respect of such resolutions;

“working day” means a day of the week other than -

- (a) Saturday and Sunday;
- (b) A day which is defined as, or declared to be, a public holiday under the Shops Ordinance 1961;
- (c) A day which is defined as, or declared to be, a public holiday under any other Act.

(2) For the purposes of this Act, a company is a subsidiary of another company if, but only if:

- (a) That other company -
  - (i) controls the composition of the board of the company; or
  - (ii) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company; or
  - (iii) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
  - (iv) is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

- (b) The company is a subsidiary of a company that is that other company's subsidiary.
- (3) For the purposes of this Act, a company is another company's holding company if that other company is its subsidiary.
- (4) For the purposes of this Act, a company is related to another company if:
  - (a) The other company is its holding company or subsidiary; or
  - (b) More than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or
  - (c) More than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
  - (d) The businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or
  - (e) There is another company to which both companies are related;

and "related company" has a corresponding meaning.

(5) In subsections (2), (3) and (4), the expression "company" includes a corporation.

**3. Public notice** - Public notice of any matter may be given for the purposes of this Act by publishing it in:

- (a) At least one issue of the Savali newspaper; or
- (b) At least two issues of any other prescribed newspaper.

**4. Solvency test-**(1) For the purposes of this Act, a company satisfies the solvency test if:

- (a) The company is able to pay its debts as they become due in the normal course of business; and
- (b) The value of the company's assets is not less than the value of its liabilities.

(2) A person required to consider whether a company satisfies the solvency test in subsection (1) may have regard to:

- (a) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
- (b) Valuations of assets or liabilities;
- (c) Such other information in relation to the financial position of the company as is reasonable in all the circumstances.

(3) If the Articles of a company provide for a solvency margin that must be maintained by the company, subsection (1)(b) applies in relation to that company as if that solvency margin were a liability of the company, except where the surplus assets of the company are being distributed:

- (a) In a liquidation; or
- (b) Prior to the removal of the company from the Samoa register in accordance with Part XVII.

**5. Act binds the State** - This Act binds the State.

## **PART II INCORPORATION AND NAMES**

### *Incorporation*

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

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

- (a) The name of the company, which must comply with section 10;

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

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

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

**8. Effect of incorporation**-(1) A certificate of incorporation of a company issued under section 7 is conclusive evidence that:

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

- (b) On and from the date of incorporation stated in the certificate, the company is incorporated under this Act.
- (2) A company incorporated under this Act is a legal entity in its own right separate from its shareholders, and continues in existence until it is removed from the Samoa register.

**9. Registration as private company or public company-**

- (1) A company may be registered as a private company if:
  - (a) Its Articles prohibit it from offering its securities to the public; and
  - (b) Its Articles restrict the number of shareholders in the company to not more than 100; and
  - (c) It has not more than 100 shareholders.
- (2) A company which is not registered as a private company is a public company.
- (3) A public company may apply to the Registrar to be registered as a private company if:
  - (a) The company meets the requirements in subsection (1); and
  - (b) The application has been approved by shareholders by special resolution.

The Registrar must amend the registration of the company accordingly, and issue a new certificate of incorporation for the company in the prescribed form.

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

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

- (6) If:
  - (a) An application is made to the Registrar in accordance with subsection (4) or subsection (5); or
  - (b) It comes to the Registrar's attention that a private company has ceased to satisfy the requirements of subsection (1);

the Registrar must register the company as a public company, and issue a new certificate of incorporation for the company in the prescribed form.

### *Names*

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

(2) The Registrar must not register a company with a name:

- (a) Which is identical or almost identical to the name of another company; or
- (b) The use of which would contravene any enactment in relation to the use of names; or
- (c) Which contravenes regulations made under this Act in relation to company names; or
- (d) Which the Registrar considers to be offensive.

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

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

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

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

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

- (a) Enter the new name of the company on the Samoa register; and
- (b) Issue a certificate of incorporation for the company recording the change of name of the company.

- (4) A change of name of a company:
  - (a) Takes effect from the date specified in the certificate issued under subsection (3); and
  - (b) Does not affect rights or obligations of the company, or legal proceedings by or against the company. Legal proceedings that might have been continued or commenced against the company under its former name may be continued or commenced against it under its new name.

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

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

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

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

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

- (a) Every written communication sent by, or on behalf of, the company; and
- (b) Every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

(2) Where:

- (a) A document that evidences or creates a legal obligation of a company is issued or signed by or on behalf of the company; and
- (b) The name of the company is not correctly stated in the document -  
every person who issued or signed the document is liable to the same extent as the company if the company fails to discharge the obligation unless-
- (c) The person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or
- (d) The Court is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.

(3) For the purposes of subsections (1) and (2) of this section and of section 86 (which relates to the manner in which a company may enter into contracts and other obligations), a company may use a generally recognised abbreviation of a word or words in its name if it is not misleading to do so.

(4) If, within the period of 12 months immediately preceding the giving by a company of any public notice, the name of the company was changed, the company must ensure that the notice states:

- (a) That the name of the company was changed in that period; and
- (b) The former name or names of the company.

(5) If a company fails to comply with subsection (1) or subsection (4):

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(1); and
- (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(1).



**PART III**  
**ARTICLES OF INCORPORATION**

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

- (a) Filing those Articles with its application for incorporation in accordance with section 6(3); or
- (b) In the case of model Articles set out in the First Schedule or the Second Schedule or the Third Schedule, indicating in its application for incorporation that it wishes to adopt those model Articles as its Articles.

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

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

(4) If a company fails to comply with subsection (3), every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 195(2).

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

- (a) Adopted the model Articles set out in another Schedule as its Articles; or
- (b) Adopted Articles which exclude or modify or are inconsistent with the model Articles.

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

- (a) Adopted the model Articles set out in another Schedule as its Articles; or
- (b) Adopted Articles which exclude or modify or are inconsistent with the model Articles.

(3) A company may resolve to adopt the model Articles in the First Schedule or the Second Schedule or the Third Schedule as its Articles in accordance with section 14(2).

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

- (a) Matters contemplated by this Act for inclusion in the Articles of a company;
  - (b) Such other matters as the company wishes to include in its Articles.
- (2) Subject to subsection (3):
- (a) The Articles of a company have effect and may be enforced as if they constituted a contract -
    - (i) between the company and its shareholders; and
    - (ii) between the company and each director; and
  - (b) The shareholders and directors of a company have the rights, powers, duties, and obligations set out in the Articles of the company.
- (3) The Articles of a company are of no effect to the extent that they are inconsistent with this Act.

## **PART IV SHARES**

### *Rights attached to shares*

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

- (a) The right to one vote on a poll at a meeting of the company on any resolution, including any resolution to:
  - (i) appoint or remove a director or auditor;
  - (ii) adopt new Articles;
  - (iii) alter the company's Articles;
  - (iv) approve a major transaction;

- (v) approve an amalgamation of the company;
  - (vi) approve reregistration of a public company as a private company, or of a private company as a public company;
  - (vii) put the company into liquidation;
  - (viii) approve the transfer of registration of the company to another country.
- (b) The right to an equal share in dividends paid by the company;
  - (c) The right to an equal share in the distribution of the surplus assets of the company in a liquidation.
- (2) Subject to the Articles of the company, different classes of shares may be issued in a company.
- (3) Without limiting subsection (2), shares in a company may:
- (a) Be redeemable; or
  - (b) Confer preferential rights to distributions of capital or income; or
  - (c) Confer special, limited, or conditional voting rights; or
  - (d) Not confer voting rights.

**18. Shares must not impose liabilities on holder-**(1) A share must not impose a liability to make a payment to the company on its holder.

- (2) Nothing in subsection (1):
- (a) Prevents a company from attaching conditions, limits or restrictions to the rights and powers attached to the share; or
  - (b) Prevents a company from issuing a share on credit terms which provide for a liability to make future payments to the company on the part of the person to whom it is first issued.

*Issue of shares***19. Issue of initial shares** - A company must:

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

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

- (a) In accordance with its Articles; or
- (b) With the approval of all shareholders under section 47.

(2) A company must deliver to the Registrar for registration, within 10 working days of the issue of any shares, a notice in the prescribed form of the issue of the shares by the company. If the rights attached to the shares are not set out in full in the Articles, the notice must be accompanied by a document setting out the terms of issue of the shares.

(3) If a company fails to comply with subsection (2), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

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

*Distributions – general provisions*

**22. Distributions prohibited unless solvency test satisfied** - A company must not make a distribution to shareholders unless there are reasonable grounds for believing

that, after that distribution is made, the company will satisfy the solvency test in section 4.

**23. Recovery of improper distributions-**(1) A distribution made to a shareholder in breach of section 22 or section 24 or section 25 may be recovered by the company from the shareholder unless:

- (a) The shareholder received the distribution in good faith and without knowledge of the company's breach of section 22 or section 24 or section 25, as the case may be; and
- (b) The shareholder has altered the shareholder's position in reliance on the validity of the distribution; and
- (c) It would be unfair to require repayment in full or at all.

(2) Where a distribution has been made in breach of section 22, any person who authorised the making of the distribution at a time when that person knew or ought to have known that the distribution did not comply with section 22 is liable to repay to the company so much of that distribution as is not reasonably recoverable from the recipients under subsection (1).

(3) If, in an action brought under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the requirements of section 22, the Court may:

- (a) Permit a shareholder to retain; or
- (b) Excuse a person who authorised the distribution from liability in respect of,

an amount equal to the value of any distribution that could properly have been made.

### *Dividends*

**24. Dividends-**(1) Subject to section 22 and to subsection (2) of this section, a company may pay a dividend to shareholders if and only if that dividend is authorised:

- (a) By all shareholders under section 47; or

- (b) If the company's Articles so provide, by the directors. A dividend authorised by the directors must comply with any conditions or restrictions set out in the Articles.
- (2) Subject to its Articles and to the terms of issue of any share, a company must not pay a dividend:
  - (a) In respect of some but not all shares; or
  - (b) That is of a greater value per share in respect of some shares than of others,unless the payment of that dividend in that manner is approved by all shareholders under section 47.
- (3) In this section, "dividend" means any distribution other than:
  - (a) A distribution by way of repurchase or redemption of shares; or
  - (b) A distribution of the surplus assets of the company in a liquidation.

### *Acquisition of own shares*

- 25. Company may acquire its own shares-**(1) A company may acquire its own shares:
- (a) In accordance with subsection (2) or section 51; and
  - (b) Subject to section 22,
- but not otherwise.
- (2) A company may acquire its own shares by agreement with a shareholder:
- (a) In accordance with its Articles; or
  - (b) With the approval of all shareholders under section 47.
- (3) A company must deliver to the Registrar for registration, within 10 working days of the acquisition of any shares, a notice in the prescribed form of the acquisition of the shares by the company.
- (4) Where an acquisition of shares by a company does not result from an offer made to all shareholders that:
- (a) Would, if accepted, leave unaffected relative voting and distribution rights; and

(b) Affords a reasonable time for acceptance of the offer,  
the notice required under subsection (3) must also be sent to each shareholder within 20 working days of the acquisition of the shares.

(5) If a company fails to comply with subsection (3) or subsection (4), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**26. Cancellation of shares acquired by company-(1)**

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

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

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

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

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

**27. Enforcement of contract to repurchase shares-(1)**

A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that performance would breach section 22.

(2) The company has the burden of proving that performance of the contract would breach section 22.

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

### *Redemption of shares*

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

- (a) At the option of the company; or
- (b) At the option of the holder of the share; or
- (c) On a date specified in the Articles or the terms of issue of the share -  
for a consideration that is:
- (d) Specified; or
- (e) To be calculated by reference to a formula; or
- (f) Required to be fixed by a suitably qualified person who is not associated with or interested in the company.

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

**29. Redemption of redeemable shares-**(1) A company must redeem a redeemable share in accordance with its Articles and the terms of issue of the share, except to the extent that the company would, by doing so, breach section 22.

(2) The company has the burden of proving that redemption of a share would breach section 22.

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



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

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

(6) If a company fails to comply with subsection (5), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(1).

### *Assistance by company in purchase of its own shares*

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

- (a) The company gives the assistance in the normal course of its business and on usual terms and conditions; or
- (b) The giving of the assistance is authorised by the directors or by all shareholders under section 47, and -
  - (i) there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test; and
  - (ii) the company complies with any conditions or restrictions in its Articles.

### *Cross-holdings*

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

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

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

(4) Where a company that holds shares in another company becomes a subsidiary of that other company:

(a) The subsidiary may, notwithstanding subsection (1), continue to hold those shares; but

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

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

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

### *Transfer of shares*

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

(2) A share is transferred by entry in the share register in accordance with section 34.

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

**33. Transfer of shares by operation of law-**(1) Subject to subsection (2), shares in a company may pass by operation of law notwithstanding anything in the Articles of the company.

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

*Share register*

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

- (a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and
  - (b) The number of shares of each class held by each shareholder within the last 7 years; and
  - (c) The date of any -
    - (i) issue of shares to; or
    - (ii) repurchase or redemption of shares from; or
    - (iii) transfer of shares by or to -each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- (2) The share register must be kept:
- (a) In a form permitted under section 97; and
  - (b) At the registered office of the company, or any other place or places permitted under section 98.
- (3) An agent may maintain the share register of the company.
- (4) If a company fails to comply with the requirements of this section:
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
  - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**35. Share register as evidence of legal title-**(1) Subject to section 36, the entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person.

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

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

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

(2) On an application under this section the Court may order:

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

(3) On an application under this section, the Court may decide:

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

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

**38. Registration of personal representative or assignee of bankrupt-**(1) Notwithstanding section 37, but subject to section 33, a personal representative of a deceased person whose name is registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as personal representative.

(2) Notwithstanding section 37, but subject to section 33(2), the assignee of the property of a bankrupt registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as the assignee of the property of the bankrupt.

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

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

### *Share certificates*

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

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

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

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

(i) the name of the company; and

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

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

(3) Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by:

(a) The share certificate relating to the share; or

- (b) Evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.
- (4) Where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.
- (5) If a company fails to comply with subsection (1):
  - (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(1); and
  - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(1).

#### *Legal nature of shares etc*

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

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

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

**42. Minimum number of shares** - Every company must have at least one issued share.

### **PART V SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS**

#### *Liability of shareholders*

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

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

- (a) Any liability to repay a distribution which is recoverable under section 23;
  - (b) Any liability under section 71.
- (3) Nothing in this section affects the liability of a shareholder to a company under a contract, including a contract for the issue of shares, or liability incurred in any other capacity, including as a director of the company, or liability for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the shareholder.

### *Powers of shareholders*

#### **44. Decisions which must be made by shareholders -**

The following powers must be exercised by the shareholders of a company by special resolution, and may not be delegated under the Articles or otherwise:

- (a) The power to approve re-registration of a public company as a private company under section 9(3), or of a private company as a public company under section 9(4);
- (b) The power to adopt new Articles, or to amend the company's Articles, under section 14(2);
- (c) The power to approve an amalgamation of the company under section 121 and the Fifth Schedule;
- (d) The power to approve a major transaction under section 46(1)(b)(i);
- (e) The power to put the company into liquidation;
- (f) The power to approve an extension of time for the completion of a private company's financial statements under section 111(3);
- (g) The power to approve the transfer of registration of the company to another country under section 173.

#### **45. Decisions which may be made by shareholders-(1)**

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

- (a) The power to appoint or remove a director;

- (b) The power to appoint an auditor.
- (2) The Articles may provide for other matters to be decided by shareholders, or approved by shareholders.
- (3) Unless the Articles provide otherwise, the powers referred to in subsection (1), and any other powers conferred on shareholders under subsection (2), may be exercised:
  - (a) By ordinary resolution; or
  - (b) In accordance with section 47.

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

- (a) The Articles expressly authorise it to enter into that transaction, or transactions of that class; or
- (b) Entry into the transaction is approved by shareholders –
  - (i) by special resolution; or
  - (ii) in accordance with section 47; or
- (c) The transaction is conditional on approval by shareholders in accordance with paragraph (b).

(2) In this section:

“Assets” includes property of any kind, whether tangible or intangible:

“Major transaction”, in relation to a company, means:

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company’s assets before the acquisition; or
- (b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company’s assets before the disposition; or
- (c) A transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company’s assets before the transaction.

(3) Nothing in paragraph (c) of the definition of the term “major transaction” in subsection (2) applies by reason only of the company giving, or entering into an agreement to give, a



charge secured over assets of the company the value of which is more than half the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation.

(4) Nothing in this section applies to a major transaction entered into by a receiver appointed pursuant to an instrument creating a charge over property of a company.

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

- (a) Any provision to the contrary in its Articles; or
  - (b) The absence of express authority to take such action in its Articles.
- (2) The matters which may be authorised in accordance with subsection (1) include but are not limited to the following:
- (a) The issue of shares;
  - (b) The making of a distribution;
  - (c) The repurchase of shares;
  - (d) Giving financial assistance for the purpose of, or in connection with, the purchase of shares in the company;
  - (e) The payment of remuneration to a director, or the making of a loan to a director, or the conferral of any other benefit on a director;
  - (f) The making of a contract between the company and a director, or of any other contract in which a director has an interest;
  - (g) Entry into a major transaction;
  - (h) The ratification after the event of any action which could have been authorised under this section.

(3) A company must not authorise a distribution under this section unless there are reasonable grounds for believing that, after that distribution is made, the company will satisfy the solvency test in section 4.

(4) Section 23 applies to a distribution made in breach of subsection (3) as if:

- (a) The distribution had been made in breach of section 22; and
- (b) The distribution was authorised by all shareholders.

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

(2) A resolution in writing that:

- (a) Relates to a matter that is required by this Act or by the Articles to be decided at a meeting of the shareholders of a company; and
- (b) Is signed by the shareholders referred to in subsection (1) -

is made in accordance with this Act or the Articles of the company, as the case may be.

(3) If, in respect of any matter, the Articles of a company:

- (a) Require approval by a higher majority than 75% of those shareholders entitled to vote and voting, the reference in subsection (1) to 75% is taken to be a reference to that higher majority;
- (b) Specify additional requirements for approval of such matters, those requirements must also be satisfied in order for the resolution to be valid.

(4) Within 5 working days of a resolution being passed under this section, the company must send a copy of the resolution to every shareholder who did not sign the resolution.

(5) A resolution may be signed under subsection (1) or subsection (2) of this section without any prior notice being given to shareholders.

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

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(1);
- (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(1).

**49. Shareholder meetings-**(1) Meetings of the shareholders of a company must be held in accordance with the Articles.

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

- (a) May be called at any time by a director;
- (b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than 5 per cent of the votes which may be cast on the issue.

(3) The Articles govern the procedure at meetings of shareholders.

#### *Alteration of shareholder rights*

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

- (a) A special resolution of each interest group; or
- (b) All shareholders under section 47.

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

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

(3) In this section:

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

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

- (a) Whose affected rights are identical; and
  - (b) Whose rights are affected by the action or proposal in the same way; and
  - (c) Subject to subsection (4)(b), who comprise the holders of one or more classes of shares in the company.
- (4) For the purposes of this section and the definition of the term “interest group”:
- (a) One or more interest groups may exist in relation to any action or proposal; and
  - (b) If -
    - (i) action is taken in relation to some holders of shares in a class and not others; or
    - (ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class, -holders of shares in the same class may fall into 2 or more interest groups.

### ***Minority buy-out rights***

#### **51. Repurchase of dissenter’s shares-(1) Where:**

- (a) A shareholder is entitled to vote on the exercise of one or more of the powers set out in -
    - (i) section 44(b), and the proposed alteration imposes or removes a restriction on the activities of the company; or
    - (ii) section 44(c) or section 44(d); and
  - (b) The shareholders resolve to exercise the power; and
  - (c) The shareholder cast all the votes attached to shares registered in the shareholder’s name and having the same beneficial owner against the exercise of the power,
- that shareholder is entitled to require the company to purchase those shares in accordance with the procedure set out in the Fourth Schedule.

(2) Where:

- (a) An interest group has, under section 50, approved, by special resolution, the taking of action that affects the rights attached to shares; and
- (b) The company becomes entitled to take the action; and
- (c) A shareholder who was a member of the interest group cast all the votes attached to the shares registered in that shareholder's name and having the same beneficial owner against approving the action,

that shareholder is entitled to require the company to purchase those shares in accordance with the procedure set out in the Fourth Schedule.

(3) Where a resolution of shareholders or of an interest group is made in writing in accordance with section 48, subsections (1) and (2) apply as if references to a shareholder who cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the matter in question were references to a shareholder who did not sign the written resolution in respect of such shares.

### *Disclosure to shareholders*

**52. Annual report to shareholders-**(1) Subject to subsection (2), the directors of every company must, within 20 working days after the date on which the company is required to complete its financial statements under section 111:

- (a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and
- (b) Send a copy of that report to each shareholder.

(2) The Articles of a private company may provide that the directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company prior to the end of that accounting period requiring such a report to be prepared.

(3) Every annual report for a company must:

- (a) Be in writing and be dated; and

- (b) Include financial statements for the accounting period which comply with section 111; and
  - (c) Where an auditor's report is required under section 112 in relation to the financial statements included in the report, include that auditor's report; and
  - (d) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
  - (e) Contain such other information as may be required by –
    - (i) regulations made under this Act; and
    - (ii) the Articles; and
  - (f) Be signed on behalf of the directors by 2 directors of the company or, if the company has only one director, by that director.
- (4) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**53. Inspection of company records by shareholders** - A shareholder is entitled to inspect company records in accordance with section 100.

**54. Other information for shareholders**-(1) A shareholder may at any time make a written request to a company for information held by the company.

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

(3) Within 10 working days of receiving a request under subsection (1), the company must either:

- (a) Provide the information; or
- (b) Agree to provide the information within a specified period; or

- (c) Agree to provide the information within a specified period if the shareholder pays a reasonable charge to the company (which must be specified and explained) to meet the cost of providing the information; or
  - (d) Refuse to provide the information, specifying the reasons for the refusal.
- (4) Without limiting the reasons for which a company may refuse to provide information under this section, a company may refuse to provide information if:
- (a) The disclosure of the information would be likely to prejudice the commercial position of the company; or
  - (b) The disclosure of the information would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or
  - (c) The request for the information is frivolous or vexatious.
- (5) If the company requires the shareholder to pay a charge for the information, the shareholder may withdraw the request, and is deemed to have done so unless, within 10 working days of receiving notification of the charge, the shareholder informs the company:
- (a) That the shareholder will pay the charge; or
  - (b) That the shareholder considers the charge to be unreasonable.
- (6) The Court may, on the application of a person who has made a request for information, if it is satisfied that:
- (a) The period specified for providing the information is unreasonable; or
  - (b) The charge set by the company is unreasonable - as the case may be, make an order requiring the company to supply the information within such time or on payment of such charge as the Court thinks fit.
- (7) The Court may, on the application of a person who has made a request for information, if it is satisfied that:
- (a) The company does not have sufficient reason to refuse to supply the information; or

(b) The company has sufficient reason to refuse to supply the information but that other reasons exist that outweigh the refusal -  
make an order requiring the company to supply the information.

(8) Where the Court makes an order under subsection (7), it may specify the use that may be made of the information and the persons to whom it may be disclosed.

(9) On an application for an order under this section, the Court may make such order for the payment of costs as it thinks fit.

**55. Investigation at request of shareholder-**(1) The Court may, on the application of a shareholder of a company, make an order authorising a person named in the order at a time specified in the order, to inspect and to make copies of, or take extracts from, the records or other documents of the company, or such of the records or documents of the company as are specified in the order, and may make such ancillary order as it thinks fit, including an order that the accounts of the company be audited by that person.

(2) The Court may make an order under subsection (1) only if it is satisfied that:

(a) In making the application, the shareholder is acting in good faith and that the inspection is proposed to be made for a proper purpose; and

(b) The person to be appointed is a proper person for the task.

(3) A person appointed by the Court under subsection (1) must diligently carry out the inspection and, having done so, must make a full report to the Court.

(4) On receiving the report of an inspector, the Court may make such order in relation to the disclosure and use that may be made of records and information obtained as it thinks fit.

(5) An order made under subsection (4) may be varied from time to time.

(6) The reasonable costs of the inspection must be met by the company unless the Court orders otherwise.



(7) A person may only disclose or make use of information or records obtained under this section in accordance with an order made under subsection (4) or subsection (5).

(8) A person who discloses or makes use of information or records obtained under this section other than in accordance with an order made under subsection (4) or subsection (5) commits an offence, and is liable on conviction to the penalty set out in section 194(2).

### *Minimum number of shareholders*

**56. Every company must have at least one shareholder -**  
A company must at all times have at least one shareholder.

## **PART VI DIRECTORS AND THEIR POWERS AND DUTIES**

**57. Meaning of “director”** - In this Act, “director”, in relation to a company:

- (a) Includes a person occupying the position of director of the company, by whatever name called; but
- (b) Does not include a receiver.

**58. Management of company** - Except to the extent that this Act or the company’s Articles provide otherwise:

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

### *Directors’ duties*

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

- (a) In good faith; and

- (b) In a manner that the director believes to be in the interests of the company.

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

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

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

- (a) This Act expressly authorises the director to exercise the relevant power notwithstanding such an interest; or
- (b) The director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either -
  - (i) the Articles expressly authorise the director to exercise the relevant power notwithstanding such an interest, following disclosure of the interest in accordance with subsection (2); or
  - (ii) the exercise of the power by the director has been approved by all shareholders under section 47, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in the exercise of any power may only be authorised by the Articles to exercise that power if the Articles require that, prior to the exercise of the power, the director must disclose the nature and extent of that interest in writing:

- (a) If there is at least one other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company;
- (b) If paragraph (a) does not apply, to all shareholders other than the director.

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

- (a) In the interests of the company; or
- (b) As required by law; or
- (c) Where there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action-
  - (i) is authorised by the Articles; or
  - (ii) is approved by shareholders under section 47.

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

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

**65. Obligations of directors in connection with insolvency**-(1) A director of a company who:

- (a) Believes that the company is unable to pay its debts as they fall due in the normal course of business; or

(b) Is aware of matters which would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due in the normal course of business -  
must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator.

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

(3) If:

(a) A director fails to comply with subsection (1); and  
(b) At the time of that failure the company was unable to pay its debts as they fell due in the normal course of business; and  
(c) The company is subsequently placed in liquidation, that director is liable to any creditor to whom the company incurred an obligation after that time in accordance with subsection (5).

(4) If:

(a) At a meeting called under this section the directors do not resolve to appoint an administrator or liquidator; and  
(b) At the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and  
(c) The company is subsequently placed in liquidation, each director other than those directors who participated in the meeting and voted in favour of appointing an administrator or a liquidator is liable to any creditor to whom the company incurred an obligation after the date of the meeting in accordance with subsection (5).

(5) A director who is liable to a creditor under subsection (3) or subsection (4) in respect of an obligation of the company is liable to that creditor for the amount of any loss suffered by that creditor as a consequence of the company's failure to perform that obligation, unless the director establishes that the creditor:

- (a) Knew or ought to have known of the circumstances which called into question the solvency of the company; or
  - (b) Otherwise assumed the risk of dealing with the company in those circumstances.
- (6) Where more than one director is liable to a creditor under this section, the liability of those directors is joint and several.

**66. Effect of unanimous shareholder approval on certain duties of directors** - If a director exercises any power or takes any other action in his or her capacity as a director with the consent or concurrence of shareholders under section 47:

- (a) The director is deemed to be acting in accordance with the requirements of section 61; and
- (b) If at the time the director so acts, there are reasonable grounds for believing that the company is able to meet its debts as they fall due, that director is deemed to be acting in accordance with the requirements of sections 59 and 64.

#### *Appointment and retirement of directors*

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

- (a) That person is a natural person; and
- (b) That person is not disqualified from being a director under subsection (2).

(2) The following persons are disqualified from being a director of a company:

- (a) A person who is under 21 years of age;
- (b) A person who is an undischarged bankrupt;
- (c) A person in respect of whom the Court has made an order under section 189 of the Companies Act 1955, prohibiting that person from being a director of or being concerned or taking part in the management of a company, or who would be

so prohibited by virtue of such an order but for the repeal of that Act;

- (d) A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 202 or 203 or 204 of this Act;
  - (f) A person who has been adjudged to be mentally defective under the Mental Health Ordinance 1961;
  - (g) In relation to any particular company, a person who does not comply with any qualifications for directors contained in the Articles of that company.
- (3) A person who is disqualified from being a director but who acts as a director is treated as a director for the purposes of any provision of this Act that imposes a duty or an obligation on a director of a company.

**68. Appointment of directors-**(1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.

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

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

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

- (a) Resigns in accordance with subsection (2); or
- (b) Is removed from office in accordance with subsection (3) or the Articles of the company; or
- (c) Becomes disqualified from being a director pursuant to section 67(2); or

- (d) Dies; or
  - (e) Otherwise vacates office in accordance with the Articles of the company.
- (2) A director of a company may resign by signing a written notice of resignation and delivering it to the registered office of the company. Subject to subsections (4) and (5), the notice is effective when it is received at that address or at a later time specified in the notice.
- (3) Subject to the company's Articles, a director may be removed by ordinary resolution.
- (4) Where a company has only one director, that director may not resign office:
- (a) Until that director has called a meeting of shareholders to receive notice of the resignation; or
  - (b) If the company has only one shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.
- (5) A notice of resignation given by the sole director of a company does not take effect, notwithstanding its terms, until the earlier of the appointment of another director of the company or:
- (a) The time and date for which a meeting of shareholders is called under subsection (4)(a); or
  - (b) If the company has only one shareholder, 10 working days after notice of the resignation has been given to that shareholder.
- (6) Notwithstanding the vacation of office, a person who held office as a director remains liable under the provisions of this Act that impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

**70. Notice of change of directors-**(1) A company must ensure that notice in the prescribed form of:

- (a) A change in the directors of a company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or

- (b) A change in the name or the residential address or the postal address of a director of a company: is delivered to the Registrar for registration.
- (2) A notice under subsection (1) must:
- (a) Specify the date of the change; and
  - (b) Include the full name and residential address and postal address of every person who is a director of the company from the date of the notice; and
  - (c) In the case of the appointment of a new director, have attached a consent by that person to act as a director, in the prescribed form; and
  - (d) Be delivered to the Registrar within 20 working days of -
    - (i) the change occurring, in the case of the appointment or resignation of a director; or
    - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or postal address of a director.
- (3) If a company fails to comply with this section:
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
  - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

### *Deemed directors*

#### **71. Persons deemed to be directors for liability purposes**

(1) A person (“the principal”) in accordance with whose directions or instructions a director is required or is accustomed to act is liable under sections 59 to 65 to the same extent as that director, unless the principal shows that the director was not in fact acting in accordance with the principal’s directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the director.



(2) A person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the Articles of the company, would fall to be exercised by the directors, is liable under sections 59 to 64 in connection with the exercise of those powers as if that person were a director.

(3) Without limiting subsection (2), if the Articles of a company confer a power on shareholders which would otherwise fall to be exercised by directors under this Act, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is liable under sections 59 to 64 in connection with the exercise of that power as if that person were a director.

(4) Without limiting subsection (2), if the Articles of a company require a director or the directors to exercise or refrain from exercising a power in accordance with a decision or direction of shareholders, any shareholder who takes part in:

(a) The making of any decision that the power should or should not be exercised; or

(b) The making of any decision whether to give a direction, -

as the case may be, is liable under sections 59 to 64 in connection with the exercise of that power as if that person were a director.

(5) A person to whom a power or duty of the directors has been directly delegated by the directors with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the directors, is liable under sections 59 to 64 in connection with the exercise of those powers as if that person were a director.

(6) For the avoidance of doubt, where any action is approved by all shareholders under section 47:

(a) No shareholder is liable under section 61 in respect of that action;

(b) If there are reasonable grounds for believing that the company is able to meet its debts as they fall due, no shareholder is liable under sections 59 or 62 or 63 or 64 in respect of that action.

***Indemnities and insurance for directors***

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

- (a) Any criminal liability; or
  - (b) Any liability to the company or a related company for any act or omission in his or her capacity as a director of the company or of the related company, as the case may be; or
  - (c) Any liability to any person arising out of a breach by that person of a duty to the company or related company, as the case may be, under sections 59, 60, 61, 62, 63 or 65.
- (2) An indemnity given in breach of this section is void.
- (3) In this section:

“Director” includes:

- (a) A person who is liable under any of sections 59 to 65 by virtue of section 71;
- (b) A former director:

“Indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and  
“indemnity” has a corresponding meaning.

**73. Company may indemnify or insure directors -** Subject to section 72, a company may provide an indemnity or purchase insurance for a director of the company or of a related company:

- (a) In accordance with its Articles; or
- (b) With the approval of shareholders under section 47.

***Miscellaneous provisions in relation to directors***

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

- (a) In accordance with its Articles; or
- (b) With the approval of shareholders under section 47.

**75. Proceedings of directors** - The proceedings of the directors of a company are governed by its Articles.

## **PART VII ENFORCEMENT**

### *Injunctions to require compliance with Act and Articles*

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

(2) An application may be made under this section by:

- (a) The company; or
- (b) A director or shareholder of the company.

(3) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(4) An order may not be made under this section in relation to conduct or a course of conduct that has been completed.

(5) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it is empowered to make under that subsection.

### *Derivative actions*

**77. Derivative actions-**(1) Subject to subsection (4), the Court may, on the application of a person referred to in subsection (2), grant leave to that person to:

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

(2) An application for leave to bring proceedings or to intervene in proceedings under this section may be made by:

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

(3) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must have regard to:

- (a) The likelihood of the proceedings succeeding;
- (b) The costs of the proceedings in relation to the relief likely to be obtained;
- (c) Any action already taken by the company or subsidiary to obtain relief;
- (d) The interests of the company or subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(4) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that either:

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

(5) Notice of the application must be served on the company or subsidiary.

(6) The company or subsidiary:

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

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

(8) The Court must, on the application of the person to whom leave was granted under this section, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under subsection (9), must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(9) The Court may, at any time, make any order it thinks fit in relation to proceedings brought or intervened in with leave of the Court under this section, and without limiting the generality of this section may:

- (a) Make an order authorising the person to whom leave was granted or any other person to control the conduct of the proceedings;
- (b) Give directions for the conduct of the proceedings;
- (c) Make an order requiring the company or the directors to provide information or assistance in relation to the proceedings;
- (d) Make an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to former and present shareholders of the company or subsidiary instead of to the company or the subsidiary.

(10) No proceedings brought or intervened in with leave of the Court under this section, may be settled or compromised or discontinued without the approval of the Court.

### *Personal actions by shareholders*

#### **78. Personal actions by shareholders against company-**

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

(2) The Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring the company to take any action that is required to be taken by the Articles of the company or this Act,

whether or not the company owes a duty to the shareholder to take that action. On making such an order, the Court may grant such consequential relief as it thinks fit.

**79. Personal actions by shareholders against directors-**

(1) A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder.

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

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

**80. Representative actions** - Where a shareholder of a company brings proceedings against the company or a director, and other shareholders have the same or substantially the same interest in relation to the subject-matter of the proceedings, the Court may appoint that shareholder to represent all or some of the shareholders having the same or substantially the same interest, and may, for that purpose, make such order as it thinks fit including, without limiting the generality of this section, an order:

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

*Prejudiced shareholders*

**81. Prejudiced shareholders-**(1) A shareholder or former shareholder of a company who considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity or in any other capacity, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit including, without limiting the generality of this subsection, an order:

- (a) Requiring the company or any other person to acquire the shareholder's shares; or
- (b) Requiring the company or any other person to pay compensation to a person; or
- (c) Regulating the future conduct of the company's affairs; or
- (d) Altering or adding to the company's Articles; or
- (e) Appointing a receiver of the company; or
- (f) Directing the rectification of the records of the company; or
- (g) Putting the company into liquidation; or
- (h) Setting aside action taken by the company or the board in breach of this Act or the Articles of the company.

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

**82. Certain conduct deemed prejudicial-**(1) Failure to comply with any of the following sections of this Act is conduct which is deemed to be unfairly prejudicial for the purposes of section 81:

- (a) Section 20(1) (which relates to issue of shares);
- (b) Section 24 (which relates to dividends);

- (d) Section 25 (which relates to acquisitions of shares by a company);
- (e) Section 28 (which relates to redemption of shares);
- (h) Section 30 (which relates to the provision of financial assistance by a company to acquire its own shares);
- (k) Section 46 (which relates to major transactions);
- (l) Section 50 (which relates to the alteration of shareholder rights conduct which is deemed to be).

(2) The meaning of the words conduct which is deemed to be “unfairly prejudicial” in subsection (1) is not limited to the matters referred to in subsection (1).

**83. Alteration to Articles by Court-**(1) Notwithstanding anything in this Act, but subject to the order, where the Court makes an order under section 81 altering or adding to the Articles of a company, the Articles must not, to the extent that they have been altered or added to by the Court, again be altered or added to without the leave of the Court.

(2) Any alteration or addition to the Articles of a company made by an order under section 81 has the same effect as if it had been made by the shareholders of the company pursuant to section 14, and the provisions of this Act apply to the Articles as altered or added to.

(3) Within 10 working days of the making of an order under section 81 altering or adding to the Articles of a company, the company must ensure that a copy of the order and a copy of the Articles as altered or added to are delivered to the Registrar for registration.

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

- (a) The company commits an offence and is liable, on conviction, to the penalty set out in section 194(2);
- (b) Every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 195(2).



**84. Effect of arbitration clause in Articles** - A shareholder is entitled to apply to the Court for relief under sections 76, 77, 78, 79 and 81 notwithstanding any provision in the Articles of a company requiring disputes relating to the affairs of the company to be referred to arbitration, or otherwise seeking to prohibit the shareholder from making such an application.

**85. Application for relief by Attorney-General-(1)** The Attorney-General may apply to the Court for an order in respect of a public company under sections 76, 77, 78, 79 and 81 as if the Attorney-General were a shareholder of that company if:

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

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

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

**PART VIII**  
**DEALINGS WITH THIRD PARTIES**

*Dealings with third parties*

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

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by -
    - (i) two or more directors of the company;
    - or
    - (ii) if there is only one director, by that director, whose signature must be witnessed; or
    - (iii) if the Articles of the company so provide, a director, or other person or class of persons. If the Articles provide for signature by one person, that person's signature must be witnessed; or
    - (iv) one or more attorneys appointed by the company in accordance with section 87:
  - (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company -
    - (i) in the manner specified in paragraph (a);
    - or
    - (ii) in writing by a person acting under the company's express or implied authority:
  - (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company by a person acting under the company's express or implied authority.
- (2) Nothing in subsection (1) prevents a company from affixing its common seal to a contract or document, if it has

one. But notwithstanding anything in the Articles of the company, the absence of a seal does not affect the enforceability of an obligation entered into in accordance with subsection (1).

(3) Subsection (1) applies to a contract or other obligation:

- (a) Whether or not that contract or obligation was entered into in Samoa; and
- (b) Whether or not the law governing the contract or obligation is the law of Samoa.

**87. Attorneys-**(1) Subject to its Articles, a company may, by an instrument in writing executed in accordance with section 86(1)(a), appoint a person as its attorney either generally or in relation to a specified matter.

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

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

**88. Validity of dealings with third parties-**(1) Subject to sections 90 and 91, the validity of a transaction entered into by a company is not affected by:

- (a) A failure to comply with any provision of this Act other than section 86;
  - (b) A failure to comply with the company's Articles;
  - (b) The absence of express authority to enter into the transaction in the company's Articles;
  - (c) A failure by the company or its directors to take any steps required by the company's Articles to authorise entry into the transaction;
  - (d) The fact that the transaction is not in the interests of the company;
  - (e) A breach of duty by a director in connection with entry into the transaction.
- (2) Subsection (1) does not limit:

- (a) Section 76 (which relates to injunctions to restrain conduct by a company that would contravene its Articles); or
  - (b) Section 77 (which relates to derivative actions); or
  - (c) Section 78 (which relates to actions by shareholders against a company); or
  - (d) Section 79 (which relates to actions by shareholders against directors); or
  - (e) The obligations and the liabilities of directors of a company in respect of any contract or other obligation, or transfer of property to or by the company.
- (3) In this section and in sections 90 to 92, “transaction”:
- (a) Includes any contract or other obligation entered into by a company, or any transfer of property to or by a company;
  - (b) Does not include -
    - (i) a distribution to shareholders; or
    - (ii) an indemnity provided to a director under section 73; or
    - (iii) remuneration or other benefits given to a director in accordance with section 74.

**89. Assumptions that may be made by third parties-(1)**

Without limiting section 88, neither a company nor any person claiming under or through a company, nor a guarantor of an obligation of a company, may assert against a person dealing with the company or against a person who has acquired property, rights, or interests from the company that:

- (a) A person named as a director of the company in the most recent notice received by the Registrar under section 70 or in the most recent annual return delivered to the Registrar -
  - (i) is not a director of a company; or
  - (ii) has not been duly appointed; or
  - (iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

- (b) A person held out by the company as a director, employee, or agent of the company -
  - (i) has not been duly appointed; or
  - (ii) does not have authority to exercise a power which a director, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (c) A person held out by the company as a director, employee, or agent of the company with authority to exercise a power which a director, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;
- (d) A document issued on behalf of a company by a director, employee, or agent of the company with actual or usual authority to issue the document is not valid or not genuine -

unless the person has, or ought to have, by virtue of his or her position with or relationship to the company, knowledge of the matters referred to in any of paragraphs (a), (b), (c), or (d), as the case may be, of this subsection.

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

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

- (a) Registered on the Samoa register; or
- (b) Available for inspection by that person under Part IX.

**90. Transactions in which directors are interested-**(1) A transaction entered into by a company in which a director is directly or indirectly materially interested is voidable at the option of the company unless:

- (a) This Act or the company's Articles expressly authorise entry into the transaction notwithstanding such an interest; or
  - (b) The transaction has been entered into with the approval of shareholders under section 47, following disclosure of the nature and extent of the director's interest to all shareholders who were not otherwise aware of those matters; or
  - (c) The other party to the transaction is a person other than the director or a person associated with the director, and either –
    - (i) that person was not aware of the interest of the director; or
    - (ii) the company received fair value under the transaction.
- (2) For the purposes of this section and section 91, a person is associated with a director if the director –
- (a) Is the parent, child or spouse of that person; or
  - (b) Is a director, employee or trustee of that person; or
  - (c) Has a material financial interest in that other person.

**91. Transactions entered into by directors in breach of certain duties -** A transaction entered into by a company as the result of action taken by a director in breach of section 59 or section 60 or section 61 is voidable at the option of the company if:

- (a) The other party to the transaction is the director or a person associated with the director; or
- (b) The other party to the transaction is a person with knowledge of the circumstances giving rise to the breach of section 59 or section 60 or section 61, and the company did not receive fair value under the transaction.

**92. Effect on third parties** - The setting aside of a transaction under section 90 or section 91 does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired:

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

### *Pre-incorporation contracts*

**93. Pre-incorporation contracts may be ratified**-(1) In this section and in sections 94 and 95, the term “pre-incorporation contract” means:

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

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

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

(4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 86.

(5) Notwithstanding any other Act, if a pre-incorporation contract has not been ratified by a company, or validated by the Court under section 95, the company may not enforce it or take the benefit of it.

**94. Warranties implied in pre-incorporation contracts-**

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

- (a) That the company will be incorporated within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the making of the contract; and
- (b) That the company will ratify the contract within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.

(2) The amount of damages recoverable in an action for breach of a warranty implied by subsection (1) is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of any unperformed obligations under the contract if the contract had been ratified.

(3) If, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 93), the liability of a person under subsection (1) (including any liability under an order made by the Court for the payment of damages) is discharged unless a contrary intention is expressed in the pre-incorporation contract.

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

- (a) Directing the company to return to that party property of any kind acquired by the company from that party by virtue of the contract; or
- (b) For any other relief in favour of that party relating to such property.



(2) The Court may, if it considers it just and equitable to do so, make any order or grant any relief it thinks fit and may do so whether or not an order has been made under section 94(2).

## **PART IX COMPANY RECORDS**

### *Obligations to keep records*

**96. Company records-**(1) Subject to section 98, a company must keep the following documents at its registered office:

- (a) The Articles of the company;
- (b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
- (c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
- (d) The full names and addresses of the current directors;
- (e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 52;
- (f) Copies of all financial statements required to be completed under section 111 for the last 7 completed accounting periods of the company;
- (g) The accounting records required by section 110 for the current accounting period and for the last 7 completed accounting periods of the company;
- (h) The share register.

(2) The references in paragraphs (b), (c), and (e), of subsection (1) to 7 years and the references in paragraphs (f) and (g) of that subsection to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company.

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

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2);
- (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

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

- (a) In written form; or
  - (b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to:
- (a) Prevent the records being falsified; and
  - (b) Detect any falsification of them.
- (3) If the directors fail to comply with subsection (2), every director commits an offence and is liable on conviction to the penalty set out in section 195(2).

**98. Alternative locations of records-**(1) The records referred to in paragraphs(a) to (g) of section 96(1) may be kept at a place in Samoa other than the company's registered office, provided that notice of that place is given to the Registrar in accordance with subsection (7).

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

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

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

- (a) Notice of the place where each register is kept must be delivered to the Registrar in accordance with

subsection (7) within 10 working days after the share register is divided or any place where a register is kept is altered; and

- (b) A copy of every register must be kept at the same place as the principal register; and
- (c) If an entry is made in a register other than the principal register, a corresponding entry must be made within 10 working days in the copy of that register kept with the principal register.

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

- (a) If the share register is not divided into 2 or more registers, the share register;
- (b) If the share register is divided into 2 or more registers, the register described as the principal register in the last notice sent to the Registrar under this section.

(6) A company need not keep its accounting records in Samoa, provided that if the records are not kept in Samoa:

- (a) The company must ensure that accounts and returns for the operations of the company that -
  - (i) disclose with reasonable accuracy the financial position of the company at intervals not exceeding 6 months; and
  - (ii) will enable the preparation in accordance with this Act of the company’s financial statements and any other document required by this Act;

are sent to, and kept at, a place in Samoa; and

- (b) Notice of the place where -
  - (i) the accounting records; and
  - (ii) the accounts and returns required under paragraph (a) -

are kept, must be given to the Registrar in accordance with subsection (7).

(7) If any records are not kept at the registered office of the company, or the place at which they are kept is changed, the

company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar of the places where the records are kept.

(8) If a company fails to comply with subsection (3) or subsection (4) or subsection (6) or subsection (7):

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
- (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

### *Inspection of records*

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

- (a) In written form; and
- (b) Without charge; and
- (c) At a reasonable time specified by the director.

(2) The Court may, on application by the company, if it is satisfied that:

- (a) It would not be in the company's interests for a director to inspect the records; or
  - (b) The proposed inspection is for a purpose that is not properly connected with the director's duties,-
- direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit.

**100. Inspection of records by shareholders-**(1) A company must keep the following records available for inspection in the manner prescribed in section 102 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company:

- (a) Minutes of all meetings and resolutions of shareholders;

- (b) Copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports and financial statements;
  - (c) The records which must be available for public inspection under section 101.
- (2) If a company fails to comply with subsection (1):
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
  - (b) Every director of a company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**101. Inspection of records by public-**(1) A company must keep the following records available for inspection in the manner prescribed in section 102 by any person who serves written notice of intention to inspect on the company:

- (a) The certificate of incorporation or registration of the company;
  - (b) The Articles of the company, if they differ from the model Articles;
  - (c) The share register;
  - (d) Particulars of the full names and residential addresses of the directors;
  - (e) Particulars of the registered office of the company and of its postal address, if different from the registered office;
  - (f) Particulars of any place other than the registered office at which records are kept in accordance with section 98.
- (2) If a company fails to comply with subsection (1):
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
  - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**102. Manner of inspection, copies etc-**(1) Documents which may be inspected under section 100 or section 101 must be available for inspection at the place at which the company's records are kept between the hours of 9.00 am and 5.00 pm on each working day during the inspection period.

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

(3) A person may require a copy of, or extract from, a document which is available for inspection by him or her under section 100 or section 101 to be sent to him or her:

- (a) Within 5 working days after he or she has made a request in writing for the copy or extract; and
- (b) If he or she has paid a reasonable copying and administration fee prescribed by the company.

(4) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (3):

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(1); and
- (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(1).

## **PART X**

### **DOCUMENTS TO BE SENT TO THE REGISTRAR**

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

- (a) In the prescribed form or in a form approved by the Registrar for use by the company pursuant to subsection (8), or as near to it as circumstances allow; and
- (b) Containing the prescribed information; and
- (c) Accompanied by the prescribed annual return fee.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar, and the information required to be contained in it must be compiled as at that date.

(3) The annual return must be signed by a director of the company or by a solicitor or public accountant authorised for that purpose.

(4) On registration of a company under Part II or re-registration under Part XX, the Registrar must allocate a month to the company for the purposes of this section.

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

(6) Notwithstanding subsection (1):

(a) A company need not make an annual return in the calendar year of its incorporation;

(b) A subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.

(7) For the purposes of this section, “prescribed” means prescribed by regulations made under this Act or by the Registrar by public notice. Different forms of annual return may be prescribed in respect of different classes of companies.

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

(9) The Registrar may send to a company an annual return form which sets out the prescribed information as it appears on the Samoa register:

(a) For approval in accordance with subsection (3) if the information set out in the form is current as at a date in the month in which the return is required to be made; or

(b) For such correction as may be required, and approval of the corrected information in accordance with subsection (3).

(10) If the annual return contains:

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

(11) If the directors of a company fail to comply with subsection (1) or subsection (2), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**104. Other documents to be sent to the Registrar** - In addition to the annual return required under section 103, a company must send the following documents to the Registrar under this Act:

- (a) Notice of the adoption of new Articles by a company, or the alteration of the Articles of a company, under section 14;
- (b) Notice of the issue of shares by the company, under section 20;
- (c) Notice of the acquisition by the company of its own shares, under section 25;
- (d) Notice of the redemption of a share, under section 29;
- (e) Notice of a change in the directors of the company, or of a change in the name or residential address of a director, under section 70;
- (f) Notice of the making of an order under section 81 altering or adding to the Articles of a company;
- (g) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 98;
- (h) Notice of a change in the registered office of the company, under section 108;
- (i) Documents requested by the Registrar under section 187.



**PART XI**  
**DOCUMENTS TO BE SENT TO SHAREHOLDERS**

**105. Annual report to shareholders** - An annual report must be sent to shareholders in accordance with section 52.

**106. Other documents to be sent to shareholders** - In addition to any annual report required under section 52, a company must send the following documents to shareholders under this Act:

- (a) Notice of any repurchase of shares to which section 25(4) applies;
- (b) Notice of a written resolution approved under section 48;
- (c) Financial statements required to be sent under section 111;
- (d) A written statement by an auditor under section 114(1)(a);
- (d) A report by an auditor under section 116.

**PART XII**  
**REGISTERED OFFICE**

**107. Registered office**-(1) A company must always have a registered office in Samoa.

(2) Subject to section 108, the registered office of a company at a particular time is the place that is described as its registered office on the Samoa register at that time.

(3) The description of the registered office must:

- (a) State the address of the registered office; and
- (b) If the registered office is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state -
  - (i) that the registered office of the company is at the offices of that firm or person; and
  - (ii) particulars of the location in any building of those offices; or

- (c) If the registered office is not at the offices of any such firm or person but is located in a building occupied by persons other than the company, state particulars of its location in the building.

**108. Change of registered office-**(1) Subject to the company's Articles and to subsection (3), the directors of a company may change the registered office of the company at any time.

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

(3) The change in the registered office takes effect on the later of:

- (a) The date 5 working days after the notice is received by the Registrar;
- (b) Any date specified in the notice as the date on which the change is to be effective.

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

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

(3) The notice must:

- (a) State that the company is required to change its registered office by a date stated in the notice, not being a date that is earlier than 20 working days after the date of the notice;
- (b) State the reasons for requiring the change;
- (c) State that the company has the right to appeal to the Court under section 192;
- (d) Be dated and signed by the Registrar.

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

(5) The company must change its registered office:

- (a) By the date stated in the notice; or

- (b) If it appeals to the Court and the appeal is dismissed, within 5 working days after the decision of the Court.
- (6) If a company fails to comply with this section:
  - (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(1); and
  - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(1).

### **PART XIII ACCOUNTING AND AUDIT**

**110. Accounting records to be kept-**(1) The directors of a company must cause accounting records to be kept that:

- (a) Correctly record and explain the transactions of the company; and
  - (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
  - (c) Will enable the directors to ensure that the financial statements of the company comply with section 111; and
  - (d) Will enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting subsection (1), the accounting records must contain:
- (a) Entries of money received and spent each day and the matters to which it relates;
  - (b) A record of the assets and liabilities of the company;
  - (c) If the company's business involves dealing in goods-
    - (i) a record of goods bought and sold, and relevant invoices;
    - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year;

- (d) If the company's business involves providing services, a record of services provided and relevant invoices.
- (3) If a company sells goods or provides services for cash in the ordinary course of carrying on a retail business:
  - (a) Invoices need not be kept in respect of each retail transaction for the purposes of subsection (2); and
  - (b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subsection (2) in respect of those transactions.
- (4) The accounting records must be kept:
  - (a) In a form permitted under section 97; and
  - (b) At the registered office of the company, or any other place permitted under section 98.
- (5) If the directors of a company fail to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

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

- (a) Within 4 months after the balance date of the company, or within any extended period applicable under subsection (3), financial statements that comply with subsection (2) are completed in relation to the company and that balance date; and
  - (b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 52.
- (2) The financial statements of a company:

- (a) Must give a true and fair view of the matters to which they relate; and
  - (b) Must comply with any regulations in relation to the form or content of financial statements made under this Act; and
  - (c) Must be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- (3) The period within which a private company must comply with the requirements of subsection (1)(a) may be extended by special resolution to a period not greater than 7 months.
- (4) The period between:
- (a) The date of incorporation of a company and its first balance date; or
  - (b) Any two balance dates of a company,
- must not exceed 15 months.
- (5) In this Act, the term “financial statements”, in relation to an entity and a balance date, means:
- (a) A statement of financial position for the entity as at the balance date; and
  - (b) In the case of -
    - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
    - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
  - (c) If required by regulations made under this Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
  - (d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under this Act -

together with any notes or documents giving information relating to the statement of financial position and other statements.

(6) Regulations in relation to the form or content of financial statements:

- (a) May prescribe different requirements in respect of different classes of company;
- (b) May require compliance with standards issued or published by a specified body or bodies, with or without modifications.

(7) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

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

- (a) To hold office as auditor until he or she ceases to hold office under subsection (3); and
  - (b) To audit the financial statements of the company.
- (2) A company must appoint an auditor:
- (a) Within 30 working days of the date on which this section first applies to the company;
  - (b) Within 30 working days of any vacancy arising in the office of auditor.
- (3) An auditor ceases to hold office if he or she:
- (a) Resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
  - (b) Is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 114(2); or
  - (c) Becomes disqualified from being the auditor of the company under section 113; or
  - (d) Dies; or
  - (e) Is adjudged to be mentally defective under the Mental Health Ordinance 1961; or

(f) Ceases to hold office under subsection (5). .

(4) This section applies to a company in respect of an accounting period if:

- (a) It is registered as a public company at any time during that accounting period; or
- (b) The company's Articles require it to appoint an auditor in respect of that accounting period; or
- (c) A shareholder or shareholders holding shares which together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of the accounting period requiring the financial statements of the company for that period to be audited.

(5) If this section applies to a company in respect of an accounting period, but does not apply in respect of a subsequent accounting period:

- (a) The financial statements of the company for the accounting period in respect of which this section does apply must be audited in accordance with this section;
- (b) The directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that this section no longer applies to the company, and that the auditor will cease to hold office unless a notice is given by shareholders under subsection (4)(c) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given;
- (c) If a notice has been given under paragraph (b), and no notice under subsection (4)(c) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of -
  - (i) the date specified in the notice; or
  - (ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

(6) If:

- (a) This section applies to a company; and
- (b) The company has neglected or failed to appoint an auditor in accordance with subsection (2) -

the Registrar may at the request of any shareholder appoint an auditor. Where the Registrar appoints an auditor, the Registrar may determine the fees to be paid by the company to the auditor. Any fees so determined may be recovered as if they were provided for in a contract between the company and the auditor.

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

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

(2) None of the following persons may be appointed or act as auditor of a company:

- (a) A director or secretary or employee of the company, or any other person responsible for keeping the accounting records of the company;
- (b) A person who is a partner, or in the employment, of a person referred to in paragraph (a);
- (c) A liquidator or administrator or a person who is a receiver in respect of the property of the company;
- (d) A body corporate;



- (e) A person who, by virtue of paragraph (a) or paragraph (b) or paragraph (c), may not be appointed or act as auditor of a related company.

**114. Statement by auditor in relation to resignation or removal-**(1) If an auditor resigns from office, the directors must, if requested to do so by that auditor:

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

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

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

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

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

**116. Auditor's report** - The auditor of a company to which section 112 applies must make a report to the shareholders on the financial statements audited by him or her which states:

- (a) The work done by the auditor; and
- (b) The scope and limitations of the audit; and

- (c) The existence of any relationship (other than that of auditor) which the auditor has with, or any interests which the auditor has in, the company or any related company; and
- (d) Whether the auditor has obtained all information and explanations that he or she has required; and
- (e) Whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the company; and
- (f) Whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the company, the financial statements -
  - (i) give a true and fair view of the matters to which they relate; and
  - (ii) comply with any applicable regulations made under this Act,  
and, if they do not, the respects in which they fail to give such a view or comply with such requirements, as the case may be.

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

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

(3) If the directors of a company fail to comply with subsection (1), every director commits an offence and is liable on conviction to the penalty set out in section 195(2).

(4) A director or employee who fails to comply with subsection (2) commits an offence and is liable on conviction to the penalty set out in section 195(2).

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

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

**118. Auditor's attendance at shareholders' meeting -**

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

- (a) Is permitted to attend a meeting of shareholders of the company; and
  - (b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
  - (c) May be heard at a meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.
- (2) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**PART XIV  
AMALGAMATIONS**

**119. Amalgamations -** Two or more companies may amalgamate, and continue as one company, in accordance with this Part.

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

- (a) Send a copy of the amalgamation proposal to every secured creditor of the company; and
- (b) Give public notice of the proposed amalgamation, including a statement that -

(i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at such other places as may be specified during normal business hours; and

(ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.

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

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

**122. Certificate of amalgamation-**(1) Forthwith after receipt of the documents required under section 121, the Registrar must issue a certificate of amalgamation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar

receives the documents, the certificate of amalgamation must be expressed to have effect on the date specified in the amalgamation proposal.

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

- (a) The amalgamation is effective; and
- (b) Subject to section 10, the amalgamated company has the name specified in the amalgamation proposal; and
- (c) The amalgamated company is entitled to all the property, rights, powers, and privileges of each of the amalgamating companies; and
- (d) The amalgamated company is subject to all the liabilities and obligations of each of the amalgamating companies; and
- (e) Proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and
- (f) A conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and
- (g) Any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

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

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

- (a) Executed or purporting to be executed by the amalgamated company; and
  - (b) Relating to any property held immediately before the amalgamation by an amalgamating company; and
  - (c) Stating that that property has become the property of the amalgamated company by virtue of this Part -
- is, in the absence of evidence to the contrary, sufficient evidence that the property has become the property of the amalgamated company.

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

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

#### **125. Powers of Court in relation to amalgamations-(1)**

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

- (a) Directing that effect must not be given to the proposal;
- (b) Modifying the proposal in such manner as may be specified in the order;

- (c) Directing the company or its directors to reconsider the proposal or any part of it.
- (2) An order may be made under subsection (1) on such terms and conditions as the Court thinks fit.

## **PART XV COMPROMISES WITH CREDITORS**

**126. Interpretation** - In this Part, unless the context otherwise requires:

“Compromise” means a compromise between a company and its creditors, including a compromise:

- (a) Cancelling all or part of a debt of the company; or
- (b) Varying the rights of its creditors or the terms of a debt; or
- (c) Relating to an alteration of a company’s Articles that affects the likelihood of the company being able to pay a debt:

“Creditor” includes:

- (a) A person who, in a liquidation, would be entitled to that a debt is owing to that person by the company; and
- (b) A secured creditor:

“Proponent” means a person referred to in section 127 who proposed a compromise in accordance with this Part.

**127. Compromise proposal**-(1) Any of the following persons may propose a compromise under this Part if that person has reason to believe that a company is or will be unable to pay its debts as they become due in the normal course of business:

- (a) The directors of the company;
- (b) A receiver appointed in relation to the whole or substantially the whole of the assets and undertaking of the company;
- (c) A liquidator or an administrator of the company;
- (d) With the leave of the Court, any creditor or shareholder of the company.

(2) Where the Court grants leave to a creditor or shareholder under subsection (1)(d), the Court may make an order directing the company to supply to the creditor or shareholder, within such time as may be specified, a list of the names and addresses of the company's creditors showing the amounts owed to each of them or such other information as may be specified to enable the creditor or shareholder to propose a compromise.

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

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

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

- (a) Notice in accordance with the Sixth Schedule of the intention to hold a meeting of creditors, or any 2 or more classes of creditors, for the purpose of voting on the resolution; and
- (b) A statement -
  - (i) containing the name and address of the proponent and the capacity in which the proponent is acting; and
  - (ii) containing the address and telephone number to which inquiries may be directed during normal business hours; and
  - (iii) setting out the terms of the proposed compromise and the reasons for it; and
  - (iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved; and
  - (v) setting out the extent of any interest of a director in the proposed compromise; and



(vi) explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will be binding on all creditors, or on all creditors of that class, if approved in accordance with section 129; and

(vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and

(c) A copy of the list or lists of creditors referred to in subsection (1).

**129. Effect of compromise-**(1) A compromise, including any amendment proposed at the meeting, is approved by creditors, or a class of creditors, if, at a meeting of creditors or that class of creditors conducted in accordance with the Sixth Schedule, the compromise, including any amendment, is adopted in accordance with clause 5 of that Schedule.

(2) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this Part is binding on the company and on:

(a) All creditors; or

(b) If there is more than one class of creditors, on all creditors of that class;

to whom notice of the proposal was given under section 128.

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

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

**130. Variation of compromise-**(1) A compromise approved under section 129 may be varied or terminated either:

- (a) In accordance with any procedure for variation or termination incorporated in the compromise as approved; or
  - (b) By the approval of a proposal to vary or terminate the compromise in accordance with this Part which, for that purpose, applies with such modifications as may be necessary as if any such proposal were a proposed compromise.
- (2) The provisions of this Part apply to any compromise that is varied in accordance with this section.

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

- (a) Give directions in relation to a procedural requirement imposed by this Part, or waive or vary any such requirement, if satisfied that it would be just to do so; or
  - (b) Order that, during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than 10 working days after the date on which notice was given of the result of the voting on it -
    - (i) proceedings in relation to a debt owing by the company be stayed; or
    - (ii) a creditor refrain from taking any other measure to enforce payment of a debt owing by the company.
- (2) Nothing in subsection (1)(b) affects the right of a secured creditor during that period to take possession of, realise, or otherwise deal with, property of the company over which that creditor has a charge.
- (3) If the Court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise that:
- (a) Insufficient notice of the meeting or of the matter required to be notified under section 128 was given to that creditor; or

(b) There was some other material irregularity in obtaining approval of the compromise; or  
(c) In the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs -  
the Court may order that the creditor is not bound by the compromise or make such other order as it thinks fit.

(4) An application under subsection (3) must be made not later than 10 working days after the date on which notice of the result of the voting was given to the creditor.

**132. Effect of compromise in liquidation of company-(1)**

Where a compromise is approved under section 129, the Court may, on the application of:

(a) The company; or  
(b) A receiver appointed in relation to property of the company; or  
(c) With the leave of the Court, any creditor or shareholder of the company -  
make such order as the Court thinks fit with respect to the extent, if any, to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator of the company.

(2) Where a compromise is approved under section 129 and the company is subsequently put into liquidation, the Court may, on the application of:

(a) The liquidator; or  
(b) A receiver appointed in relation to property of the company; or  
(c) With the leave of the Court, any creditor or shareholder of the company -  
make such order as the Court thinks fit with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

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

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

#### **PART XVI**

#### **APPROVAL OF ARRANGEMENTS ETC BY COURT**

**134. Interpretation** - In this section, unless the context otherwise requires:

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

“Company” means:

- (a) A company within the meaning of section 2;
- (b) An overseas company that is registered on the overseas register.

“Creditor” includes:

- (a) A person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and
- (b) A secured creditor.

**135. Approval of arrangements, amalgamations, and compromises-**(1) Subject to subsection (2), but notwithstanding any other provision or the Articles of a company, the Court may, on the application of a company or any shareholder or creditor of a company, order that an arrangement or amalgamation or compromise is binding on the company and on such other persons or classes of persons as the Court may specify. Such an order may be made on such terms and conditions as the Court thinks fit.

(2) An arrangement or amalgamation or compromise may be approved under this Part only if it is not practicable for the arrangement, amalgamation or compromise to be effected under Part XIV or Part XV, or under both. For the avoidance of doubt, it is not impracticable for an arrangement, amalgamation or compromise to be effected under Part XIV or Part XV by reason only that the compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in those Parts.

(3) Before making an order under subsection (1), the Court may, on the application of the company or any shareholder or creditor or other person who appears to the Court to be interested, or of its own motion, make any one or more of the following orders:

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

- (c) An order requiring that a report on the proposed arrangement or amalgamation or compromise be prepared for the Court by a person specified by the Court and, if the Court thinks fit, be supplied to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the Court to be interested;
  - (d) An order as to the payment of the costs incurred in the preparation of any such report;
  - (e) An order specifying the persons who are entitled to appear and be heard on the application to approve the arrangement or amalgamation or compromise.
- (4) In making an order under subsection (3), the Court must have regard to the procedures for consideration of amalgamations under Part N and for consideration of compromises under Part XV.
- (5) An order made under this section has effect on and from the date specified in the order.
- (6) Within 10 working days of an order being made by the Court under this section, the company must ensure that a copy of the order is delivered to the Registrar for registration.
- (7) If a company fails to comply with subsection (4), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**136. Court may make additional orders-**(1) Without limiting section 135, the Court may, for the purpose of giving effect to any arrangement or amalgamation or compromise approved under that section, either by the order approving the arrangement or amalgamation or compromise, or by any subsequent order, provide for, and prescribe terms and conditions relating to:

- (a) The transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements;
- (b) The issue of shares, securities, or policies of any kind;

- (c) The continuation of legal proceedings;
  - (d) The liquidation of any company;
  - (e) The provisions to be made for persons who voted against the arrangement or amalgamation or compromise at any meeting called in accordance with any order made under section 135(2)(b) or who appeared before the Court in opposition to the application to approve the arrangement or amalgamation or compromise;
  - (f) Such other matters as are necessary or desirable to give effect to the arrangement or amalgamation or compromise.
- (2) Within 10 working days of an order being made by the Court under this section, the company must ensure that a copy of the order is delivered to the Registrar for registration.
- (3) If a company fails to comply with subsection (2), every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**137. Application of section 132** - The provisions of section 132 apply with such modifications as may be necessary in relation to any compromise approved under section 135.

## **PART XVII REMOVAL FROM REGISTER**

**138. Removal from register** - A company is removed from the Samoa register when a notice signed by the Registrar stating that the company is removed from the Samoa register is registered under this Act.

**139. Grounds for removal from register**-(1) Subject to this section, the Registrar must remove a company from the Samoa register if:

- (a) The Registrar is satisfied that -
  - (i) the company has ceased to carry on business; and
  - (ii) there is no other reason for the company to continue in existence; or

- (b) The company has been put into liquidation, and -
    - (i) no liquidator is acting; or
    - (ii) the prescribed documents confirming that the liquidation of the company has been completed have not been sent or delivered to the Registrar within 6 months after the completion of the liquidation; or
  - (c) There is sent or delivered to the Registrar a request in the prescribed form made by -
    - (i) a shareholder authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or
    - (ii) a director or any other person, if the Articles of the company so require or permit: that the company be removed from the Samoa register on either of the grounds specified in subsection (2); or
  - (d) A liquidator sends or delivers to the Registrar the prescribed documents confirming that the liquidation of the company has been completed.
- (2) A request that a company be removed from the Samoa register under subsection (1)(c) may be made on the grounds:
- (a) That the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its Articles and this Act; or
  - (b) That the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.
- (3) A request that a company be removed from the Samoa register under subsection (1)(c) must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being removed from the Samoa register.
- (4) The Registrar must remove a company from the Samoa register under subsection (1)(a) only if:
- (a) The Registrar has complied with section 140; and



- (b) The company has not satisfied the Registrar that it is carrying on business or that reason exists for the company to continue in existence; and
  - (c) The Registrar -
    - (i) is satisfied that no person has objected to the removal under section 142; or
    - (ii) if an objection to the removal has been received, has complied with section 143.
- (5) The Registrar must remove a company from the Samoa register under paragraphs (b), (c), or (d) of subsection (1) only if:
- (a) The Registrar is satisfied that notice has been given in accordance with section 141; and
  - (b) The Registrar -
    - (i) is satisfied that no person has objected to the removal under section 142; or
    - (ii) if an objection to the removal has been received, has complied with section 143.

**140. Notice of intention to remove where company has ceased to carry on business-**(1) Before a company can be removed from the Samoa register under section 139(1)(a), the Registrar must:

- (a) Give notice to the company in accordance with subsection (2); and
  - (b) Give notice of the matters set out in subsection (3) to any person who is entitled to a registered charge in respect of property of the company; and
  - (c) Give public notice of the matters set out in subsection (3).
- (2) The notice to be given under subsection (1)(a) must:
- (a) State the section under, and the grounds on which, it is intended to remove the company from the Samoa register; and
  - (b) State that, unless -
    - (i) by the date specified in the notice, which must not be less than 20 working days

after the date of the notice, the company satisfies the Registrar by notice in writing that it is still carrying on business or there is other reason for it to continue in existence; or

(ii) the Registrar does not, in accordance with section 143, proceed to remove the company from the register:

the company will be removed from the Samoa register.

(3) The notice to be given under paragraph (b) and paragraph (c) of subsection (1) must specify:

- (a) The name of the company; and
- (b) The section under, and the grounds on which, it is intended to remove the company from the Samoa register; and
- (c) The date by which an objection to the removal under section 142 must be delivered to the Registrar, which must not be less than 20 working days after the date of the notice.

**141. Notice of intention to remove in other cases-**(1) If a company is to be removed from the register under section 139(1)(b), the Registrar must give public notice of the matters set out in subsection (4).

(2) If a company is to be removed from the register under section 139(1)(c) or (d), the applicant, or the liquidator, as the case may be, must give public notice of the matters set out in subsection (4).

(3) If a company is to be removed from the register under section 139(1)(b), the Registrar, or, if it is to be removed from the register under section 139(1)(c), the applicant, as the case may be, must also give notice of the matters set out in subsection (4) to:

- (a) The company; and
  - (b) A person who is entitled to a registered charge in respect of property of the company .
- (4) The notice to be given under this section must specify:
- (a) The name of the company; and

- (b) The section under, and the grounds on which, it is intended to remove the company from the Samoa register; and
- (c) The date by which an objection to the removal under section 142 must be delivered to the Registrar, which must be not less than 20 working days after the date of the notice.

**142. Objection to removal from register-**(1) Where a notice is given of an intention to remove a company from the Samoa register, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any one or more of the following grounds:

- (a) That the company is still carrying on business or there is other reason for it to continue in existence; or
  - (b) That the company is a party to legal proceedings; or
  - (c) That the company is in receivership, or liquidation, or both; or
  - (d) That the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company; or
  - (e) That the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Part VII; or
  - (f) That, for any other reason, it would not be just and equitable to remove the company from the Samoa register.
- (2) For the purposes of subsection (1)(d):
- (a) A claim by a creditor against a company is not an undischarged claim if -
    - (i) the claim has been paid in full; or
    - (ii) the claim has been paid in part under a compromise entered into under Part XV or by being otherwise compounded to the reasonable satisfaction of the creditor; or
    - (iii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or

- (iv) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and
- (b) A claim by a shareholder or any other person against a company is not an undischarged claim if -
  - (i) payment has been made to the shareholder or that person in accordance with a right under the company's Articles to receive or share in the company's surplus assets; or
  - (ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

**143. Duties of Registrar if objection received-**(1) If an objection to the removal of a company from the Samoa register is made on a ground specified in section 142(1)(a), (b), or (c), the Registrar must not proceed with the removal unless the Registrar is satisfied that:

- (a) The objection has been withdrawn; or
- (b) Any facts on which the objection is based are not, or are no longer, correct; or
- (c) The objection is frivolous or vexatious.

(2) If an objection to the removal of a company from the Samoa register is made on a ground specified in section 142(1)(d), (e), or (f), the Registrar must give notice to the person objecting that, unless notice of an application to the Court by that person for an order:

- (a) That the company be put into liquidation; or
- (b) Under section 144, that, on any ground specified in section 142, the company not be removed from the Samoa register:

is served on the Registrar not later than 20 working days after the date of the notice, the Registrar intends to proceed with the removal.

(3) If:

- (a) Notice of such an application to the Court is not served on the Registrar; or
- (b) The application is withdrawn; or

(c) On the hearing of such an application, the Court refuses to grant either an order putting the company into liquidation or an order that the company not be removed from the Samoa register -  
the Registrar must proceed with the removal.

(4) Every person who makes such an application must give the Registrar notice in writing of the decision of the Court within 5 working days of the decision being given.

(5) The Registrar must send:

- (a) A copy of an objection under section 142; and
- (b) A copy of a notice given by or served on the Registrar under this section; and
- (c) If the company is removed from the Samoa register, notice of the removal -  
to a person who sent or delivered to the Registrar a request that the company be removed from the Samoa register under section 139(1)(c) or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 139(1)(d).

**144. Powers of Court-**(1) A person who gives a notice objecting to the removal of a company from the Samoa register on a ground specified in section 142(1)(d), (e), or (f) may apply to the Court for an order that the company not be removed from the register on any ground set out in that subsection.

(2) On an application for an order under subsection (1), the Court may, if it is satisfied that the company should not be removed from the register on any of those grounds, make an order that the company is not to be removed from the register.

**145. Property of company removed from register-**(1) Property that, immediately before the removal of a company from the Samoa register, had not been distributed or disclaimed, vests in the State with effect from the removal of the company from the register.

(2) For the purposes of this section, property of the former company includes leasehold property and all other rights vested

in or held on trust for the former company, but does not include property held by the former company on trust for any other person.

(3) The Financial Secretary must, forthwith on becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and particulars of the property.

(4) Where property is vested in the State under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before the removal of the company from the Samoa register, or any other person claiming through that person, may apply to the Court for an order:

- (a) Vesting all or part of the property in that person; or
- (b) For payment to that person by the State of compensation of an amount not greater than the value of the property.

(5) On an application made under subsection (4), the Court may:

- (a) Decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among 2 or more applicants; or
- (b) Order that the hearing of 2 or more applications be consolidated; or
- (c) Order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or
- (d) Make an ancillary order.

(6) Compensation ordered to be paid under subsection (4) must be paid out of the Treasury Fund without further appropriation than this section.

**146. Disclaimer of property by the State-**(1) The Financial Secretary may, by notice in writing, disclaim the State's title to property vesting in the State under section 145 if the property is onerous property.

(2) The Financial Secretary must forthwith give public notice of the disclaimer.

(3) Property that is disclaimed under this section is deemed not to have vested in the State under section 145.

(4) Subject to any order of the Court, the Financial Secretary is not entitled to disclaim property unless:

(a) The property is disclaimed within 12 months after the vesting of the property in the State first comes to the notice of the Secretary; or

(b) If any person gives notice in writing to the Secretary requiring the Secretary to elect, before the close of such date as is stated in the notice, not being a date that is less than 60 working days after the date on which the notice is received by the Secretary, whether to disclaim the property, the property is disclaimed before the close of that date, -

whichever occurs first.

(5) A statement in a notice disclaiming property under this section that the vesting of the property in the State first came to the notice of the Financial Secretary on a specified date is, in the absence of proof to the contrary, evidence of the fact stated.

(6) A disclaimer under this section:

(a) Brings to an end on and from the date of the disclaimer the rights, interests, and liabilities of the State in relation to the property disclaimed;

(b) Does not, except so far as necessary to release the State from a liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section may:

(a) Claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of any order made by the Court under paragraph (b);

- (b) Apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (8) The Court may make an order under subsection (7)(b) if it is satisfied that it is just that the property should be vested in the applicant.
- (9) For the purposes of this section, “onerous property” means :
  - (a) An unprofitable contract; or
  - (b) Property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

**147. Liability of directors, shareholders, and others to continue-**(1) The removal of a company from the Samoa register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register and that liability continues and may be enforced as if the company had not been removed from the register.

**148. Liquidation of company removed from Samoa register-**(1) Notwithstanding the fact that a company has been removed from the Samoa register, the Court may appoint a liquidator of the company as if the company continued in existence.

- (2) If a liquidator is appointed in accordance with subsection (1):
  - (a) The law in relation to liquidation of a company applies to the liquidation with such modifications as may be necessary;
  - (b) The provisions of section 151 apply, with such modifications as may be necessary, to property of the company that is vested in the State under section 145 as if the company had been restored to the Samoa register.



**149. Registrar may restore company to Samoa register-**

(1) Subject to this section, the Registrar must, on the application of a person referred to in subsection (2), and may, on his or her own motion, restore a company that has been removed from the Samoa register to the register if he or she is satisfied that, at the time the company was removed from the register:

- (a) The company was still carrying on business or other reason existed for the company to continue in existence; or
- (b) The company was a party to legal proceedings; or
- (c) The company was in receivership, or liquidation, or administration.

(2) Any person who, at the time the company was removed from the Samoa register, was:

- (a) A shareholder or director of the company; or
- (b) A creditor of the company; or
- (c) An administrator, a liquidator, or a receiver of the property, of the company -

may make an application under subsection (1).

(3) Before the Registrar restores a company to the Samoa register under this section:

- (a) In the case of a company that was removed from the Samoa register under paragraph (a) or paragraph (b) of section 139(1), the Registrar must give public notice setting out -
  - (i) the name of the company; and
  - (ii) the name and address of the applicant; and
  - (iii) the section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and
  - (iv) the date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice;

- (b) In the case of a company that was removed from the Samoa register under paragraph (c) or paragraph (d) of section 139(1), the person who made the application under subsection (1) must give public notice setting out -
- (i) the name of the company; and
  - (ii) the person's name and address; and
  - (iii) the section under, and the grounds on which, the application is made; and
  - (iv) the date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.
- (4) The Registrar must not restore a company to the Samoa register if the Registrar receives an objection to the restoration within the period stated in the notice.
- (5) Before the Registrar restores a company to the Samoa register under this section, the Registrar may require any of the provisions of this Act or any other Act or any regulations made under this Act or any other Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.
- (6) The Court may, on the application of the Registrar or the applicant, give such directions or make such orders as may be necessary or desirable for the purpose of placing a company that is restored to the Samoa register under this section and any other persons as nearly as possible in the same position as if the company had not been removed from the register.
- (7) Nothing in this section limits or affects section 150.

**150. Court may restore company to Samoa register-(1)**

The Court may, on the application of a person referred to in subsection (2), order that a company that has been removed from the Samoa register be restored to the register if it is satisfied that:

- (a) At the time the company was removed from the register;

- (i) the company was still carrying on business or other reason existed for the company to continue in existence; or
  - (ii) the company was a party to legal proceedings; or
  - (iii) the company was in receivership, or liquidation, or administration; or
  - (iv) the applicant was a creditor, or a shareholder, or a person who had an undischarged claim against the company; or
  - (v) the applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company under Part Seven; or
- (b) For any other reason it is just and equitable to restore the company to the Samoa register.
- (2) The following persons may make an application under subsection (1):
- (a) Any person who, at the time the company was removed from the Samoa register -
    - (i) was a shareholder or director of the company; or
    - (ii) was a creditor of the company; or
    - (iii) was a party to any legal proceedings against the company; or
    - (iv) had an undischarged claim against the company; or
    - (v) was the administrator, or liquidator, or a receiver of the property of, the company;
  - (b) The Registrar;
  - (c) With the leave of the Court, any other person.
- (3) Before the Court makes an order restoring a company to the Samoa register under this section, it may require any provisions of this Act or any other Act or any regulations made under this Act or any other Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.

(4) The Court may give such directions or make such orders as may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been removed from the Samoa register.

**151. Restoration to register-**(1) A company is restored to the Samoa register when a notice signed by the Registrar stating that the company is restored to the Samoa register is registered under this Act.

(2) A company that is restored to the Samoa register is deemed to have continued in existence as if it had not been removed from the register.

**152. Vesting of property in company on restoration to register-**(1) Subject to this section, property of a company that is, at the time the company is restored to the Samoa register, vested in the State pursuant to section 145, vests in the company on its restoration to the Samoa register as if the company had not been removed from the register.

(2) Nothing in subsection (1) applies to any property vested in the State pursuant to section 145 if the Court has made an order for the payment of compensation to any person pursuant to section 145(4)(b) in respect of that property.

(3) Nothing in subsection (1) applies to land or any estate or interest in land that has vested in the State pursuant to section 145 if transmission to the State of the land or that estate or interest in land has been registered under the Land Registration Act 1992/1993.

(4) Where transmission to the State of land or any estate or interest in land that has vested in the State pursuant to section 145 has been registered under the Land Registration Act 1992/1993, the Court may, on the application of the company, make an order:

- (a) For the transfer of the land or the estate or interest to the company; or
- (b) For the payment by the State to the company of compensation -

(i) of an amount not greater than the value of the land or the estate or interest as at the date of registration of the transmission; or

(ii) if the land or the estate or interest has been sold or contracted to be sold, of an amount equal to the net amount received or receivable from the sale.

(5) On an application under subsection (4), the Court may decide any question concerning the value of the land or the estate or interest.

(6) Compensation ordered to be paid under subsection (4) must be paid out of the Treasury Fund without further appropriation than this section.

## **PART XVIII OVERSEAS COMPANIES**

**153. Meaning of “carrying on business”** - For the purposes of this Part:

(a) A reference to an overseas company carrying on business in Samoa includes a reference to the overseas company -

(i) establishing or using a share transfer office or a share registration office in Samoa; or

(ii) administering, managing, or dealing with property in Samoa as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner;

(b) An overseas company does not carry on business in Samoa merely because in Samoa it -

(i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or

(ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or

(iii) maintains a bank account; or

(iv) effects a sale of property through an independent contractor; or

(v) solicits or procures an order that becomes a binding contract only if the order is accepted outside Samoa; or

(vi) creates evidence of a debt or creates a charge on property; or

(vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or

(viii) conducts an isolated transaction that is completed within a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or

(ix) invests its funds or holds property.

**154. Name must comply with section 10-**(1) An overseas company must not carry on business in Samoa on or after the commencement of this Act under a name that could not be registered under section 7(2).

(2) Subsection (1) does not apply to an overseas company that, immediately before the commencement of this Act, is registered under Part XII of the Companies Act 1955.

(3) If an overseas company contravenes this section:

(a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**155. Overseas companies to register under this Act-**(1) An overseas company that, on or after the commencement of this Act, commences to carry on business in Samoa must apply for registration under this Part in accordance with section 157 within 10 working days of commencing to carry on business.

(2) Subject to subsection (3) an overseas company that, immediately before the commencement of this Act, was carrying on business in Samoa and, on the commencement of this Act, continues to carry on business in Samoa, must apply

for registration under this Part in accordance with section 157 within 10 working days of the commencement of this Act.

(3) An overseas company registered under Part XII of the Companies Act 1955 immediately before the date of commencement of this Act is, on and from that date, deemed to be registered under this Part instead of under Part XII of the Companies Act 1955.

(4) An overseas company that is deemed to be registered under this Part by virtue of subsection (3) must, within 20 working days of the commencement of this Act, deliver to the Registrar for registration, a notice in the prescribed form stating:

- (a) The full address of the principal place of business in Samoa of the overseas company;
- (b) The postal address in Samoa of the overseas company;
- (c) The full name of one or more persons resident or incorporated in Samoa who are authorised to accept service in Samoa of documents on behalf of the overseas company; and
- (d) The postal address and residential or business address of each of the persons referred to in paragraph (c).

(5) An overseas company that changes its name must send or deliver to the Registrar a notice in the prescribed form of the change of name within 10 working days of the change of name.

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

- (a) The overseas company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
- (b) Every director of the overseas company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**156. Validity of transactions not affected** - A failure by an overseas company to comply with section 154 or section 155 does not affect the validity or enforceability of any transaction entered into by the overseas company.

**157. Application for registration-**(1) An application for registration of an overseas company under this Part must be delivered to the Registrar and must:

- (a) Be in the prescribed form; and
  - (b) Be signed by or on behalf of the overseas company.
- (2) Without limiting subsection (1), the application must:
- (a) State the name of the overseas company; and
  - (b) State the full names and residential addresses and postal addresses of the directors of the overseas company at the date of the application; and
  - (c) State the full address of the place of business in Samoa of the overseas company or, if the overseas company has more than one place of business in Samoa, the full address of the principal place of business in Samoa of the overseas company; and
  - (d) State the postal address in Samoa of the overseas company; and
  - (e) Have attached evidence of incorporation of the overseas company, and, if not in English, a certified translation of that document; and
  - (f) State the full name of one or more persons resident or incorporated in Samoa who are authorised to accept service in Samoa of documents on behalf of the overseas company, and the postal address and residential or business address of each such person.



**158. Registration of overseas company-**(1) Where the Registrar receives a properly completed application for registration under this Part of an overseas company, the Registrar must forthwith register the overseas company on the overseas register.

(2) Where an overseas company is deemed to be registered under this Part by virtue of section 155(3), the Registrar must, forthwith after the commencement of this Act, transfer the registration of the overseas company to the overseas register.

(3) Where the Registrar receives a notice of a change of name of an overseas company in accordance with section 155(5), the Registrar must register the change of name on the overseas register.

**159. Use of name by overseas company-**(1) Every overseas company that carries on business in Samoa must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in:

- (a) Written communications sent by, or on behalf of, the company; and
- (b) Documents issued or signed by, or on behalf of, the company that evidence or create a legal obligation of the company.

(2) For the purposes of subsection (1), a generally recognised abbreviation of a word or words may be used in the name of an overseas company if it is not misleading to do so.

**160. Further information to be provided by overseas company-**(1) An overseas company that carries on business in Samoa must ensure that, within 20 working days of the change, notice in the prescribed form is given to the Registrar of:

- (a) A change in the directors or in the names or residential addresses or postal addresses of the directors of the overseas company; or
- (b) A change in the address of the place of business or principal place of business of the overseas company; or
- (c) A change in the postal address in Samoa of the overseas company; or

- (d) A change in any person or in the postal address or residential or business address of any person authorised to accept service in Samoa of documents on behalf of the overseas company.
- (2) An overseas company must, within 20 working days of being required to do so by the Registrar, deliver to the Registrar:
- (a) A certified copy of the instrument constituting or defining its constitution; or
  - (b) A certified copy of any alterations to that instrument since a copy of the instrument was last provided to the Registrar; and
  - (c) If the relevant documents are not in English, a certified translation of those documents.

The Registrar must require delivery of the relevant documents by the overseas company under this subsection if requested to do so by any creditor of that overseas company in Samoa, unless the Registrar considers that the request is frivolous or vexatious.

- (3) If an overseas company fails to comply with subsection (1) or subsection (2):
- (a) The overseas company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
  - (b) Every director of the overseas company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**161. Annual return of overseas company-**(1) Every overseas company that carries on business in Samoa must ensure that the Registrar receives each year, during the month allocated to the overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the overseas register in respect of the overseas company referred to in the return is correct at the date of the return.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.

(3) On registration of an overseas company under this Part, the Registrar must allocate a month to the company for the purposes of this section.

(4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3).

(5) Notwithstanding subsection (1), an overseas company, not being an overseas company that is deemed to be registered under this Part, need not make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsection (1) or subsection (2):

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and
- (b) Every director of the overseas company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**162. Overseas company ceasing to carry on business in Samoa-**(1) An overseas company registered under this Part that intends to cease to carry on business in Samoa must:

- (a) Give public notice of that intention; and
- (b) Give notice to the Registrar in the prescribed form stating the date on which it will cease to carry on business in Samoa.

(2) The Registrar must remove an overseas company from the overseas register as soon as practicable after:

- (a) The date specified in the notice given in accordance with subsection (1)(b); or
- (b) Receipt of a written notice given by a liquidator that the liquidation of the assets in Samoa of the overseas company has been completed.

**163. Liquidation of assets in Samoa-**(1) An application may be made to the Court for the liquidation of the assets in Samoa of an overseas company in accordance with the law in relation to liquidation of companies. That law applies with

necessary modifications to an application made under this section, and to the conduct of the liquidation of the assets in Samoa of an overseas company.

(2) An application may be made under subsection (1) whether or not the overseas company:

- (a) Is registered under this Part; or
- (b) Has given public notice of an intention to cease to carry on business in Samoa in accordance with section 162(1)(a); or
- (c) Has given notice to the Registrar of the date on which it will cease to carry on business in Samoa in accordance with section 162(1)(b); or
- (d) Has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

**164. Attorneys of overseas companies-**(1) Part XII of the Property Law Act 1952 applies, with the necessary modifications, in relation to a power of attorney executed by an overseas company registered under this Part to the same extent as if the company were a person and as if the commencement of the liquidation of the company was the death of a person within the meaning of Part XII of that Act.

(2) A declaration endorsed on or annexed to an instrument appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made by one of the directors before a person authorised by section 22 of the Oaths, Affidavits and Declarations Act 1963 to take a declaration for use in Samoa, in the country concerned, to the effect that:

- (a) The company is incorporated under the name stated in the instrument in accordance with the law of the country in which it is so incorporated, the name of which is stated in the declaration; and
- (b) The instrument has been executed, and the powers appearing to be conferred on the attorney are authorised to be conferred under the constitution of the company, or under the Act or instrument

under which the company is incorporated, or by any other instrument constituting or defining the constitution of the company; and

- (c) The person making the declaration is a director of the company -

is conclusive evidence of those facts.

## **PART XIX TRANSFER OF REGISTRATION**

### *Registration of Overseas Companies as Companies Under This Act*

**165. Overseas companies may be registered as companies under this Act** - Subject to this Part, an overseas company may be registered as a company under this Act.

**166. Application for registration** - An application by an overseas company to register as a company under this Act must be in the prescribed form and must be accompanied by:

- (a) A certified copy of its certificate of incorporation or other similar document that evidences its incorporation; and
- (b) A certified copy of the documents defining its constitution; and
- (c) Evidence acceptable to the Registrar that the company is not prevented from being registered as a company under this Act by either section 167 or section 168; and
- (d) The documents and information that are required to register a company under Part II; and
- (e) Any other documents and information the Registrar may require.

(2) The Registrar may direct that a document that has been delivered to the Registrar or registered under Part XVIII need not accompany the application.

**167. Overseas companies must be authorised to register**

- An overseas company must not be registered as a company under this Act unless:

- (a) The company is authorised to transfer its incorporation under the law of the country in which it is incorporated; and
- (b) The company has complied with the requirements of that law in relation to the transfer of its incorporation; and
- (c) If that law does not require its shareholders, or a specified proportion of them, to consent to the transfer of its incorporation, the transfer has been consented to by not less than 75 percent of its shareholders entitled to vote and voting in person or by proxy at a meeting of which not less than 21 days notice is given specifying the intention to transfer the company's incorporation.

**168. Overseas companies that cannot be registered-(1)**

An overseas company must not be registered as a company under this Act if:

- (a) The company is in liquidation; or
- (b) A receiver or manager has been appointed, whether by a court or not, in relation to the property of the company; or
- (c) The company has entered into a compromise or arrangement with a creditor that is in force; or
- (d) An application has been made to a court, whether in Samoa or in another country -
  - (i) to put the company into liquidation or wind it up; or
  - (ii) for the approval of a compromise or arrangement between the company and a creditor-

and has not been dealt with.

**169. Registration-**(1) As soon as the Registrar receives a properly completed application for registration of an overseas company as a company under this Act, the Registrar must:

- (a) Enter the company on the Samoa register; and
- (b) Issue a certificate of registration in the prescribed form.

(2) A certificate of registration of a company issued under this section is conclusive evidence that:

- (a) All the requirements as to registration have been complied with; and
- (b) On and from the date of registration stated in the certificate, the company is registered under this Act.

(3) If an application for registration of an overseas company as a company under this Act specifies a date on which the registration is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of registration must be expressed to have effect on the date specified in the application.

**170. Effect of registration-**(1) The registration of an overseas company under this Act does not:

- (a) Create a new legal entity; or
- (b) Prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or
- (c) Affect the property, rights or obligations of the company; or
- (d) Affect proceedings by or against the company.

(2) Proceedings that could have been commenced or continued by or against the overseas company before registration under this Act may be commenced or continued by or against the company after registration.

### *Transfer of Registration of Companies to Other Jurisdictions*

**171. Companies may transfer incorporation -** Subject to this Part, a company may be removed from the Samoa register

in connection with becoming incorporated under the law in force in, or in any part of, another country.

**172. Application to transfer incorporation** - An application by a company for removal from the Samoa register in connection with becoming incorporated under the law in force in, or in any part of, another country must be in the prescribed form and must be accompanied by:

- (a) Evidence acceptable to the Registrar that sections 173 and 174 have been complied with; and
- (b) Evidence acceptable to the Registrar that the removal of the company from the Samoa register is not prevented by section 175; and
- (c) Written notice from the Commissioner of Inland Revenue that the Commissioner has no objection to the company being removed from the Samoa register; and
- (d) Evidence acceptable to the Registrar that the company is incorporated under that law, or will be incorporated under that law no later than the date on which it is to be removed from the Samoa register; and
- (e) Any other documents or information the Registrar may require.

**173. Approval of shareholders** - A company must not apply to be removed from the Samoa register under section 172 unless the making of the application has been approved by special resolution.

**174. Company to give public notice**-(1) A company must not apply to be removed from the Samoa register under section 172 unless:

- (a) The company gives public notice -
  - (i) stating that it intends, after the date specified in the notice, which must not be less than 20 working days after the date of the notice, to apply under section 172 for the company to be



removed from the Samoa register in connection with the company becoming incorporated under the law in force in, or in any part of, another country; and

(ii) specifying the country or part of the country under the law of which it is proposed that the company will become incorporated; and

(b) The application is made after that date.

(2) If the Court is satisfied that the proposed removal of a company from the Samoa register under this Part would unfairly prejudice a shareholder or creditor of the company or a person to whom the company is under an obligation, it may, on the application of that person, made at any time before the date on which the removal becomes effective, make any of the following orders:

(a) An order restraining the removal of the company from the Samoa register under this Part;

(b) An order specifying conditions that must be met by the company before being removed from the Samoa register under this Part;

(c) If an order is made under paragraph (a) or paragraph (b), orders granting such consequential or ancillary relief as the court thinks fit.

**175. Companies that cannot transfer incorporation** - A company must not be removed from the Samoa register under section 176 if:

(a) The company is in administration or liquidation, or an application has been made to the Court to put the company into liquidation; or

(b) A receiver or manager has been appointed, whether by a court or not, in relation to any property of the company; or

(c) The company has entered into a compromise with creditors or a class of creditors under Part XV or a compromise has been proposed under that Part in relation to the company; or

- (d) A compromise has been approved by the Court under Part Sixteen in relation to the company or an application has been made to the Court to approve a compromise under that Part; or
- (e) An order restraining its removal from the register has been made under section 174, or any conditions specified in an order made under section 174 have not been satisfied by the company.

**176. Removal from register-**(1) As soon as the Registrar receives a properly completed application under section 172 to remove a company from the Samoa register, the Registrar must enter on the register a notice signed by the Registrar that the company has been removed from the register in accordance with this Part.

(2) If an application for removal of a company from the Samoa register under this Part specifies a date on which the removal is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the application, the notice of removal must be expressed to have effect on the date specified in the application.

**177. Effect of removal from register-**(1) The removal of a company from the Samoa register under section 176 does not:

- (a) Prejudice or affect the identity of the body corporate that was constituted under this Act or its continuity as a legal person; or
- (b) Affect the property, rights, or obligations of that body corporate; or
- (c) Affect proceedings by or against that body corporate.

(2) Proceedings that could have been commenced or continued by or against a company before the company was removed from the Samoa register under section 176 may be commenced or continued by or against the body corporate that continues in existence after the removal of the company from the register.

**PART XX**  
**REREGISTRATION OF 1955 ACT COMPANIES**

**178. Period for reregistration-**(1) The Registrar may give notice to an existing company in the prescribed form requiring that existing company to reregister under this Act no later than the date specified in the notice, which must be at least 60 working days after the date on which the notice is sent to the company. The Registrar must also give public notice of every such notice.

(2) An existing company:

- (a) Must reregister under this Act in accordance with section 180 no later than the date specified in a notice given under subsection (1), or any later date fixed by the Registrar under subsection (3);
- (b) May, with the consent of the Registrar, reregister under this Act before a notice has been sent to it under subsection (1).

(3) Subject to subsection (4), the Registrar may, on the application of a company to which a notice has been given under subsection (1), or of any director or shareholder of that company, extend the date specified in the notice if the Registrar considers that the request is reasonable in the circumstances. A request under this subsection may be made before or after the date specified in the notice.

(4) The Registrar must require every existing company to reregister under this Act no later than the last day of the transition period.

(5) An existing company that fails to reregister within the time specified in subsection (2) may reregister at any later time on or before the last day of the transition period, but:

- (a) Section 182(1) will not apply to that company; and
- (b) The amount payable by that company at the time of reregistration under section 180(3)(b) includes all penalties owed by that company under the 1955 Act.

(6) In this Part, “transition period” means the period from the date on which this Act comes into force to the date two years after this Act comes into force, or to such later date as may be prescribed by regulations made under this Act.

**179. Articles of reregistered company-**(1) Subject to subsections (2) and (3), upon reregistration:

- (a) The memorandum of association of an existing company is deemed to form part of the articles of association of the company. To the extent of any inconsistency between the memorandum of association and the articles of association of an existing company, the memorandum of association prevails;
- (b) The articles of association of an existing company (incorporating its memorandum of association, in accordance with paragraph (a)) continue as the Articles of the company for the purposes of this Act. To the extent that the articles of association of an existing company adopt all or any of the rules set out in Table A of the First Schedule to the Companies Act 1955, those rules are deemed to be incorporated in the Articles of the company as if set out in full in those Articles;
- (c) All shares issued by the existing company prior to reregistration are deemed to be converted into shares of no par value. That conversion does not affect the rights and obligations attached to the shares, and in particular does not affect -
  - (i) the entitlements of the holder of the shares in respect of distributions, voting, the redemption of any redeemable shares, or the distribution of surplus assets of the company in a liquidation;
  - (ii) any unpaid liability of a shareholder in respect of a share. Notwithstanding anything in the Articles of the existing company, the holder of a share at the time of reregistration is

personally liable for any liability (including a liability for calls) attached to the share. In the event of a transfer of the share after reregistration, that liability remains with the shareholder at the time of reregistration, and does not pass to the transferee of the share.

(2) An existing company may resolve to adopt the model Articles in the First Schedule or Second Schedule or Third Schedule as its Articles upon reregistration under this Act.

(3) An existing company may resolve to adopt new Articles which differ from the model Articles upon reregistration under this Act.

(4) A resolution under subsection (2) or subsection (3) must be approved prior to reregistration in the same manner as would be required under the Companies Act 1955 and the company's memorandum of association and articles of association for approval of a resolution altering the company's articles of association.

**180. Documents to be filed-**(1) An application for reregistration of an existing company under this Act must be made to the Registrar in the prescribed form.

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

- (a) The name of the company;
- (b) Whether the company is to be registered under this Act as a private company or a public company;
- (c) The full name and residential address and postal address of every director of the company;
- (d) In the case of a private company, the full name of every shareholder of the company, and the number and class of shares held by each shareholder;
- (e) The registered office of the company;
- (f) The postal address of the company, which may be the postal address of the registered office or any other postal address; and

- (g) Particulars of the location of any records of the company referred to in section 96 which are not kept at the registered office of the company.
- (3) An application for reregistration must be accompanied by :
- (a) A copy of -
    - (i) any resolution of the company under section 179(2) or (3);
    - (ii) any Articles adopted by a company under section 179(3); or
    - (iii) certified copies of the existing memorandum of association and articles of association of the company, if it is reregistering with its existing constitutional documents under section 179(1);
  - (b) All amounts due to the Registrar but unpaid by that company under the Companies Act 1955, excluding any penalties in respect of which liability is waived under section 182;
  - (c) The prescribed fee for reregistration.

**181. Effect of reregistration-**(1) As soon as the Registrar receives an application for reregistration which complies with section 180, the Registrar must:

- (a) Enter the company on the Samoa register; and
  - (b) Issue a certificate of reregistration in respect of the company in the prescribed form.
- (2) A certificate of reregistration of a company issued under subsection (1) is conclusive evidence that:
- (a) All the requirements as to reregistration have been complied with; and
  - (b) On and from the date of reregistration stated in the certificate, the company is registered under this Act.
- (3) The reregistration of an existing company under this Act does not:
- (a) Prejudice or affect the identity of the body corporate that was constituted under the Companies Act 1955 or its continuity as a legal person; or

- (b) Affect the property, rights, or obligations of that body corporate; or
- (c) Affect proceedings by or against that body corporate.

**182. Liability of reregistered company for outstanding amounts under 1955 Act-**(1) A company which reregisters in accordance with section 180 within the time specified in section 178(2), and all present and former directors of that company, are released from liability for any amounts payable by way of penalty or default fine in respect of matters which were required to be done by that company prior to the date on which this Act comes into force under any of the following provisions of the Companies Act 1955:

- (a) Section 450, which relates to carrying on business without an annual licence;
  - (b) Section 463, which relates to default fines.
- (2) The Registrar must, if requested to do so by an existing company, advise that company in writing of the amount payable by it on reregistration under section 180(3)(b). If the company considers that the amount advised by the Registrar is incorrect:
- (a) The company may appeal to the Court under section 192, and the Court will determine the amount payable;
  - (b) Pending determination of that appeal, the company must pay the amount specified by the Registrar on reregistration. The company's obligation to reregister within the time specified in section 178 is not affected by any appeal under this section;
  - (c) If the appeal is successful, the Registrar must refund any overpaid amount to the company, together with interest at a rate fixed by the Court.

**183. Failure to reregister-**(1) An existing company which fails to reregister on or before the last day of the transition period is deemed to have been dissolved on that date.

(2) Sections 145 to 148 and 150 to 152 apply to a company which is deemed to have been dissolved as if it had been removed from the register under section 138, with all necessary modifications.

**PART XXI  
REGISTRAR**

**184. Registrar and Deputy Registrars of Companies-(1)**

The Minister must appoint a person to hold office as Registrar of Companies.

(2) The Registrar may appoint as many Deputy Registrars of Companies as may be necessary for the purposes of this Act.

(3) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties and functions of the Registrar under this Act.

(4) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of his or her authority to do so.

(5) The person holding office as Registrar of Companies under the Companies Act 1955 and every person holding office as a Deputy Registrar of Companies under that Act, immediately before the commencement of this Act, is deemed to have been appointed as Registrar of Companies or as a Deputy Registrar of Companies, as the case may be, in accordance with this section.

**185. Registers-(1)** The Registrar must ensure that:

(a) A register of companies registered under Part II or reregistered under this Act in accordance with Part XX, as the case may be; and

(b) A register of overseas companies registered or deemed to be registered under Part XVIII -

is kept in Samoa.

(2) The Samoa register must be kept in such place in Samoa as the Registrar determines from time to time.

(3) The overseas register must be kept at such place in Samoa as the Registrar determines from time to time.

(4) The Samoa register and the overseas register may be kept in such manner as the Registrar thinks fit including, either wholly or partly, by means of a device or facility:

(a) That records or stores information electronically or by other means; and



- (b) That permits the information so recorded or stored to be readily inspected or reproduced in usable form.

**186. Registration of documents-**(1) As soon as a document is received for registration under this Act, the Registrar must:

- (a) Subject to subsection (2), register the document in the Samoa register or the overseas register, as the case may be; and
- (b) In the case of a document that is not an annual return, give written advice of the registration to the person from whom the document was received.

(2) If a document received by the Registrar for registration under this Act:

- (a) Is not in the prescribed form, if any; or
- (b) Does not comply with this Act or regulations made under this Act; or
- (c) Is not printed or typewritten; or
- (d) Where the Samoa register or the overseas register is kept wholly or partly by means of a device or facility referred to in section 185(4), is not in a form that enables particulars to be entered directly by electronic or other means in the device or facility; or
- (e) Has not been properly completed; or
- (f) Contains material that is not clearly legible; or
- (g) Is not accompanied by the prescribed fee -

the Registrar may refuse to register the document. The Registrar may require either:

- (h) That the document be submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
- (i) That a fresh document be submitted in its place.

(3) For the purposes of this Act, a document is registered when:

- (a) The document itself is constituted part of the Samoa register or the overseas register; or

(b) Particulars of the document are entered in any device or facility referred to in section 185(4).

(4) Neither registration, nor refusal of registration, of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

**187. Power of Registrar to require information and copies of documents-**(1) The Registrar may give notice to a company requiring that company to provide:

(a) Corrected or updated particulars of any matter entered on the Samoa register or the overseas register, as the case may be, in respect of that company; or

(b) A certified copy of any document that has been or ought to have been delivered to the Registrar for registration under this Act or under any other Act in respect of that company, -

by the date specified in the notice, which must not be less than 10 working days from the date on which the notice is sent to the company.

(2) In this section, “company” includes an overseas company.

(3) If information provided to the Registrar by a company in accordance with this section differs from the information shown on the Samoa register or the overseas register in respect of that company, the Registrar may amend the register accordingly.

(4) If a company fails to comply with a notice given under subsection (1):

(a) The company commits an offence and is liable on conviction to the penalty set out in section 194(2); and

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 195(2).

**188. Inspection and evidence of registers-**(1) A person may, on payment of any fees that are prescribed, inspect:

- (a) Any document that constitutes part of the Samoa register or the overseas register;
- (b) Particulars of any registered document that have been entered on any device or facility referred to in section 185(4);
- (c) Any registered document particulars of which have been entered in any such device or facility -  
during the hours when the office of the Registrar is open to the public for the transaction of business on a working day.

(2) A person may, on payment of any fees that are prescribed, require the Registrar to give or certify:

- (a) A certificate of incorporation of a company; or
- (b) A certificate of reregistration of a company under this Act in accordance with Part XX; or
- (c) A copy of, or extract from, a document that constitutes part of the Samoa register or the overseas register; or
- (d) Particulars of any registered document that have been entered in any device or facility referred to in section 185(4); or
- (e) A copy of, or extract from, a registered document particulars of which have been entered in any such device or facility.

(3) A process to compel the production of:

- (a) A registered document kept by the Registrar; or
- (b) Evidence of the entry of particulars of a registered document in any device or facility referred to in section 185(4) -

must not issue from the Court without the leave of the Court and, if it does, it must have a statement attached to it that it is issued with the leave of the Court.

(4) A copy of, or extract from, a registered document:

- (a) That constitutes part of the Samoa register or the overseas register; or
- (b) Particulars of which have been entered in any device or facility referred to in section 185(4) -

certified to be a true copy or extract by the Registrar is admissible in evidence in legal proceedings to the same extent as the original document.

(5) An extract certified by the Registrar as containing particulars of a registered document that have been entered in any device or facility referred to in section 185(4) is, in the absence of proof to the contrary, conclusive evidence of the entry of those particulars.

**189. Notices by Registrar-**(1) A notice that the Registrar is required by this Act to give to a natural person, must be given in writing and in a manner that the Registrar considers appropriate in the circumstances.

(2) Without limiting subsection (1), the Registrar may give notice in writing to a natural person by:

- (a) Having it delivered to that person; or
- (b) Posting it to that person at his or her last known postal address; or
- (c) Sending it by facsimile machine to a telephone number used by that person for transmission of documents by facsimile; or
- (d) Having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.

(3) Section 212 applies, with such modifications as may be necessary, in respect of the giving of notices by the Registrar.

(4) A document that:

- (a) Appears to be a copy of a notice given by the Registrar; and
- (b) Is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means -

is admissible in legal proceedings as a copy of the notice.

**190. Registrar's powers of inspection-**(1) The Registrar or a person authorised by the Registrar may:

- (a) For the purpose of -

- (i) ascertaining whether a company or a director of a company is complying, or has complied, with this Act; or
  - (ii) ascertaining whether the Registrar should exercise any of his or her rights or powers under this Act; or
  - (iii) detecting offences against this Act; and
- (b) If, in the Registrar's opinion, it is in the public interest to do so,-
- do any of the following:
- (c) Require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; or
  - (d) Inspect and take copies of relevant documents; or
  - (e) Take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or
  - (f) Retain relevant documents for a period which is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.

(2) Nothing in this section limits or affects the Income Tax Administration Act 1974 or the Statistics Act 1971.

(3) The Registrar or a person authorised by the Registrar must consult with the Central Bank of Samoa before exercising any of the powers conferred by subsection (1) if the purpose of exercising the power relates to a company that is a financial institution (within the meaning of section 2 of the Central Bank of Samoa Act 1984).

(4) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by subsection (1).

(5) Any person who:

- (a) Fails to comply with a requirement under subsection (1)(c); or
- (b) Acts in contravention of subsection (4) -

commits an offence and is liable on conviction to the penalty set out in section 194(2).

(6) In this section,-

“Company” includes an overseas company:

“Relevant document”, in relation to a company, means a document that contains information relating to -

- (a) The company; or
- (b) Money or other property that is, or has been, managed, supervised, controlled or held in trust by or for the company.

**191. Disclosure of information and reports-**(1) A person authorised by the Registrar for the purpose of section 190 who has:

- (a) Obtained a document or information in the course of making an inspection under that section; or
- (b) Prepared a report in relation to an inspection under that section -

must, if directed to do so by the Registrar, give the document, information, or report to -

- (c) The Minister; or
- (d) The Secretary; or
- (e) Any person authorised by the Registrar to receive the document, information, or report for the purposes or in connection with the exercise of powers conferred by this Act; or
- (f) A liquidator for the purposes of the liquidation of a company; or
- (g) Any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.

(2) A person authorised by the Registrar for the purposes of section 190 who has:

- (a) Obtained a document or information in the course of making an inspection under that section; or
- (b) Prepared a report in relation to an inspection under that section -

must give the document, information, or report to the Registrar or a Deputy Registrar when directed to do so by any person holding any of those offices.

(3) A person authorised by the Registrar for the purposes of section 190 who has:

- (a) Obtained a document or information in the course of making an inspection under that section; or
- (b) Prepared a report in relation to an inspection under that section -

must not disclose that document, information, or report except:

- (c) In accordance with subsection (1) or subsection (2);  
or
- (d) Subject to the approval of the Registrar, with the consent of the person to whom it relates; or
- (e) Subject to the approval of the Registrar, for the purposes or in connection with the exercise of powers conferred by this Act; or
- (f) To the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
- (g) Subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a company or the assets of an overseas company;  
or
- (h) In the course of criminal proceedings; or
- (i) Subject to the approval of the Registrar, for the purpose of detecting offences against any Act.

(4) Notwithstanding any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 190 is admissible in evidence at the hearing of an application to the Court to appoint a liquidator.

(5) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 194(2).

**192. Appeals from Registrar's decisions-**(1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within 15 working days after

the date of notification of the act or decision, or within such further time as the Court may allow.

(2) On hearing the appeal, the Court may approve the Registrar's act or decision or may give such directions or make such determination in the matter as the Court thinks fit.

(3) Subject to subsection (4), but notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 190, until a decision on the appeal or application is given:

- (a) The Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and
  - (b) No person is excused from fulfilling an obligation under that section by reason of that appeal or application.
- (4) If an appeal or application to which subsection (3) applies is allowed or granted, as the case may be:

- (a) The Registrar must ensure that, forthwith after the decision of the Court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and
- (b) No information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

**193. Fees-**(1) The Head of State, acting on the advice of Cabinet, may make regulations prescribing:

- (a) Fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act;
- (b) Amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by this Act;



- (c) Fees or other amounts payable to the Registrar in respect of any other matter under this Act.
- (2) The Registrar may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.
- (3) Any regulations made under subsection (1) may authorise the Registrar to waive, in whole or in part and on such conditions as may be prescribed, payment of any amount referred to in paragraph (b) of that subsection.
- (4) If the Registrar, under section 12(1), requires a company to change its name, no fee is payable in respect of an application to change the name of the company.
- (5) Any fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the State.

## **PART XXII OFFENCES AND PENALTIES**

**194. Penalty for failure to comply with Act-**(1) A person convicted of an offence against any of the following sections is liable to a fine not exceeding \$1,000 -

- (i) Section 13(5)(a) (which relates to the use of a company name);
  - (ii) Section 39(5)(a) (which relates to share certificates);
  - (iii) Section 48(6)(a) (which relates to resolutions in lieu of meetings);
  - (iv) Section 102(4)(a) (which relates to the obligation to provide copies of documents);
  - (v) Section 109(6)(a) (which relates to a requirement to change a company's registered office).
- (2) A person convicted of an offence against any of the following sections is liable to a fine not exceeding \$5,000 -
- (i) Section 34(4)(a) (which relates to the obligation to maintain a share register);
  - (ii) Section 55(8) (which relates to investigations of company records at the request of a shareholder);

(iii) Section 70(3)(a) (which relates to the duty to give notice of a change of directors);

(iv) Section 83(4)(a) (which relates to the alteration of articles by the Court);

(v) Section 96(3)(a) (which relates to company records);

(vi) Section 98(8)(a) (which relates to alternative locations of records);

(vii) Section 100(2)(a) (which relates to inspection of company records by shareholders);

(viii) Section 101(2)(a) (which relates to inspection of company records by the public);

(ix) Section 154(3)(a) (which relates to the use of names by overseas companies);

(x) Section 155(6)(a) (which relates to the registration of overseas companies);

(xi) Section 160(3)(a) (which relates to further information to be provided by overseas companies);

(xii) Section 161(6)(a) (which relates to the filing of annual returns by overseas companies);

(xiii) Section 187(4)(a) (which relates to the Registrar's power to require information and copies of documents);

(xiv) Section 190(5) (which relates to the Registrar's powers of inspection);

(xv) Section 191(5) (which relates to the disclosure of information and reports obtained during an investigation).

(3) A person convicted of an offence against any of the following sections is liable to imprisonment for a term not exceeding 7 years or to a fine not exceeding \$100,000, or both -

(i) Section 198(1) (which relates to false statements);

(ii) Section 198(2) (which relates to false statements);

(iii) Section 199 (which relates to fraudulent use or destruction of company property);

- (iv) Section 200(1) (which relates to falsification of records);
- (v) Section 200(2) (which relates to falsification of records);
- (vi) Section 201(1) (which relates to carrying on business fraudulently);
- (vii) Section 201(2) (which relates to carrying on business fraudulently);
- (viii) Section 202(4) (which relates to persons prohibited from managing companies);
- (ix) Section 203(6) (which relates to disqualification of directors);
- (x) Section 204(10) (which relates to the disqualification of certain persons from managing companies);
- (xi) Section 204(11) (which relates to the interim prohibition of certain persons from managing companies by the Registrar).

**195. Penalties that may be imposed on directors personally-**(1) A director of a company who is convicted of an offence against any of the following sections is liable to a fine not exceeding \$1,000 -

- (i) Section 13(5)(b) (which relates to the use of a company name);
- (ii) Section 29(6) (which relates to the redemption of redeemable shares);
- (iii) Section 39(5)(b) (which relates to share certificates);
- (iv) Section 48(6)(b) (which relates to resolutions in lieu of meetings);
- (v) Section 102(4)(b) (which relates to the obligation to provide copies of documents);
- (vi) Section 109(6)(b) (which relates to a requirement to change a company's registered office).

(2) A director of a company who is convicted of an offence against any of the following sections is liable to a fine not exceeding \$5,000:

- (i) Section 14(4) (which relates to the adoption and alteration of articles);
- (ii) Section 20(3) (which relates to the obligation of the board to deliver a notice of the issue of shares);
- (iii) Section 25(5) (which relates to the acquisition by a company of its own shares);
- (iv) Section 34(4)(b) (which relates to the obligation to maintain share register);
- (v) Section 52(4) (which relates to the duty to send an annual report to shareholders);
- (vi) Section 70(3)(b) (which relates to the duty to give notice of a change of directors);
- (vii) Section 83(4)(b) (which relates to the alteration of articles by the Court);
- (viii) Section 96(3)(b) (which relates to company records);
- (ix) Section 97(3) (which relates to the form in which company records are kept);
- (x) Section 98(8)(b) (which relates to alternative locations of records);
- (xi) Section 100(2)(b) (which relates to inspection of company records by shareholders);
- (xii) Section 101(2)(b) (which relates to inspection of company records by the public);
- (xiii) Section 103(11) (which relates to the obligation to file an annual return);
- (xiv) Section 110(5) (which relates to the keeping of accounting records);
- (xv) Section 111(7) (which relates to the obligation to prepare financial statements);
- (xvi) Section 117(3) (which relates to access to information by auditors);
- (xvii) Section 117(4) (which relates to information requested by auditors);
- (xviii) Section 118(2) (which relates to the attendance of auditors at meetings of shareholders);

(ixx) Section 135(7) (which relates to the approval of arrangements, amalgamations, and compromises by the court);

(xx) Section 136(3) (which relates to the power of the court to make additional orders in connection with the approval of an arrangement, amalgamation or compromise);

(xxi) Section 154(3)(b) (which relates to the use of names by overseas companies);

(xxii) Section 155(6)(b) (which relates to the registration of overseas companies);

(xxiii) Section 160(3)(b) (which relates to further information to be provided by overseas companies);

(xxiv) Section 161(6)(b) (which relates to the filing of annual returns by overseas companies);

(xxv) Section 187(4)(b) (which relates to the Registrar's power to require information and copies of documents).

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

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

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

- (b) He or she took all reasonable steps to ensure that the company complied with the requirements; or
- (c) In the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements.

**197. Proceedings for offences-**(1) Notwithstanding anything to the contrary in the Criminal Procedure Act 1972, any information for an offence under this Act may be laid at any time within 3 years after the date of the offence.

(2) Nothing in sections 194 to 196 affects the liability of any person under any other Act, but no person may be convicted of an offence against any of those sections and a provision of any other Act in respect of the same conduct.

**198. False statements-**(1) Every person who, with respect to a document required by or for the purposes of this Act:

- (a) Makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) Omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular -

commits an offence, and is liable on conviction to the penalties set out in section 194(3).

(2) Every director or employee of a company who makes or furnishes, or authorises or permits the making or furnishing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to:

- (a) A director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or
- (b) An administrator, a liquidator, liquidation committee, or receiver or manager of property of the company; or
- (c) If the company is a subsidiary, a director, employee, or auditor of its holding company,-

knowing it to be false or misleading, commits an offence, and is liable on conviction to the penalties set out in section 194(3).

(3) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

**199. Fraudulent use or destruction of company property** - Every director, employee, or shareholder of a company who:

(a) Fraudulently takes or applies property of the company for his or her own use or benefit, or for a use or purpose other than the use or purpose of the company; or

(b) Fraudulently conceals or destroys property of the company -

commits an offence, and is liable on conviction to the penalties set out in section 194(3).

**200. Falsification of records**-(1) Every director, employee, or shareholder of a company who, with intent to defraud or deceive a person:

(a) Destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or

(b) Makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company -

commits an offence, and is liable on conviction to the penalties set out in section 194(3).

(2) Every person who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act:

- (a) Records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or
  - (b) With intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies matter recorded or stored in the device, or fails or omits to record or store any matter in the device -
- commits an offence, and is liable on conviction to the penalties set out in section 194(3).

**201. Carrying on business fraudulently-**(1) Every person who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose commits an offence and is liable on conviction to the penalties set out in section 194(3).

(2) Every director of a company who:

- (a) By false pretences or other fraud induces a person to give credit to the company; or
  - (b) With intent to defraud creditors of the company,-
    - (i) gives, transfers, or causes a charge to be given on, property of the company to any person; or
    - (ii) causes property to be given or transferred to any person; or
    - (iii) caused or was a party to execution being levied against property of the company -
- commits an offence and is liable on conviction to the penalties set out in section 194(3).



**PART XXIII**  
**PROHIBITION AND DISQUALIFICATION OF**  
**DIRECTORS**

**202. Persons prohibited from managing companies-(1)**

Where:

- (a) A person has been convicted of any offence in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or
- (b) A person has been convicted of an offence under any of sections 198 to 201 of this Act or under any provision of Part VIII of the Crimes Ordinance 1961 other than sections 112 or 113,

that person must not, during the period of 5 years after the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company, unless that person first obtains the leave of the Court which may be given on such terms and conditions as the Court thinks fit.

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

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

(4) A person who acts in contravention of this section, or of any order made under this section, commits an offence and is liable on conviction to the penalty set out in section 194(3).

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

**203. Court may disqualify directors-(1) Where:**

- (a) A person has been convicted of any offence in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years,

whether or not a sentence of imprisonment was imposed; or

- (b) A person has been convicted of an offence under any of sections 198 to 201 of this Act or under any provision of Part VIII of the Crimes Ordinance 1961 other than sections 112 or 113; or
- (c) A person has committed an offence for which the person is liable (whether convicted or not) under this Part; or
- (d) A person has, while a director of a company and whether convicted or not,-
  - (i) persistently failed to comply with this Act or the Companies Act 1955, or, where the company has failed to so comply, persistently failed to take all reasonable steps to obtain such compliance; or
  - (ii) been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or
  - (iii) acted in a reckless or incompetent manner in the performance of his or her duties as director; or

(e) A person has become of unsound mind -  
the Court may make an order that the person must not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company for such period not exceeding 10 years as may be specified in the order.

(2) A person intending to apply for an order under this section must give not less than 10 working days' notice of that intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and give evidence or call witnesses.

(3) An application for an order under this section may be made by the Registrar, the Official Assignee, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company; and on the hearing of:

- (a) An application for an order under this section by the Registrar or the Official Assignee or the liquidator; or
  - (b) An application for leave under this section by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator -
- the Registrar, Official Assignee, or liquidator must appear and call the attention of the Court to any matters which seem to him or her to be relevant, and may give evidence or call witnesses.
- (4) An order may be made under this section even though the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.
- (5) The Registrar of the Court must, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar must give public notice of the name of the person against whom the order is made.
- (6) Every person who acts in contravention of an order under this section commits an offence and is liable on conviction to the penalties set out in section 194(3).
- (7) In this section, "company" includes an overseas company.

**204. Disqualification of persons who contribute to company failure from managing companies-**(1) This section applies in relation to a company:

- (a) That has been put into liquidation because of its inability to pay its debts as and when they became due;
- (b) That has ceased to carry on business because of its inability to pay its debts as and when they became due;
- (c) In respect of which execution is returned unsatisfied in whole or in part;
- (d) In respect of the property of which a receiver, or a receiver and manager, has been appointed by a court or pursuant to the powers contained in an

instrument, whether or not the appointment has been terminated;

- (e) In respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or as a manager, or to exercise control, under or pursuant to any enactment, whether or not the appointment has been terminated;
- (f) That has entered into a compromise or arrangement with its creditors.

(2) This section also applies in relation to a company the liquidation of which has been completed whether or not the company has been removed from the Samoa register.

(3) Where -

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

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

The Registrar must give public notice of the making of any order under this subsection.

(4) Where a person was, within a period of 5 years before a notice was given to that person under subsection (5) (whether that period commenced before or after the commencement of this Act), a director of, or concerned in, or a person who took part in, the management of, 2 or more companies to which this section applies, paragraphs (b) and (c) of subsection (3) are presumed to be satisfied in relation to each of those companies unless that person satisfies the Court to the contrary.

(5) The Registrar must not make an application under subsection (3) unless:

- (a) Not less than 10 working days' notice of the fact that the Registrar intends to consider making such an application is given to the person and the Registrar considers any representations made by the person; and
- (b) The Registrar appoints a public accountant to advise the Registrar in relation to the making of the application. That public accountant may also be appointed to inquire into the affairs of the company under section 190; and
- (c) The public accountant appointed under paragraph (b), after considering the information in the Registrar's possession, any representations made by the person concerned to the Registrar, and if the public accountant thinks fit, any representations made by that person to the public accountant, advises the Registrar that in his or her professional opinion -
  - (i) the manner in which the affairs of the company were managed was wholly or partly responsible for the company being a company in relation to which this section applies; and
  - (ii) the person bears a significant degree of responsibility for the manner in which the affairs of the company were managed.

(6) Where the Registrar has made an application under subsection (3) in respect of a person, the Registrar may give a notice to that person prohibiting that person from being a director or promoter of a company, or being concerned in, or

taking part, whether directly or indirectly, in the management of, a company pending the determination by the Court of that application. The Registrar must give public notice of every such notice.

(7) No person to whom a notice under subsection (6) applies may be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.

(8) Where a person to whom the Registrar has issued a notice under subsection (6) appeals against the issue of the notice under this Act or otherwise seeks judicial review of the notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.

(9) The Registrar may, by notice in writing to a person to whom a notice under subsection (6) has been given:

- (a) Revoke that notice; or
- (b) Exempt that person from the notice in relation to a specified company or companies, on such conditions as the Registrar thinks fit.

The Registrar must give public notice of every such notice.

(10) Every person who acts in contravention of an order under this section commits an offence and is liable on conviction to the penalties set out in section 194(3).

(11) Every person to whom a notice under subsection (6) is given who fails to comply with the notice commits an offence and is liable on conviction to the penalties set out in section 194(3).

(12) In this section, “company” includes an overseas company that carries on business in Samoa.

**205. Liability for contravening sections 202 or 203 or 204-**(1) A person who acts as a director of a company in contravention of section 202 or an order made under section 203 is personally liable to:

- (a) A liquidator of the company for every unpaid debt incurred by the company; and
  - (b) A creditor of the company for a debt to that creditor incurred by the company -
- while that person was so acting.

(2) A person who acts in contravention of an order or a notice under section 204 is personally liable to:

- (a) A liquidator of the company for every unpaid debt incurred by the company; and
  - (b) A creditor of the company for a debt to that creditor incurred by the company -
- while that person was so acting.

#### **PART XXIV REPEALS AND AMENDMENTS**

**206. Repeal of Companies Act 1955** - The Companies Act 1955 and the Samoa Companies Order 1935 are repealed on the prescribed date.

#### **PART XXV MISCELLANEOUS**

**207. Service of documents on companies in legal proceedings** - A document, including a writ, summons, notice, or order, in any legal proceedings may be served on a company as follows:

- (a) By delivery to a person named as a director of the company on the Samoa register; or
- (b) By delivery to an employee of the company at the company's head office or principal place of business; or
- (c) By leaving it at the company's registered office; or
- (d) By serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
- (e) In accordance with an agreement made with the company; or
- (f) By serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.

**208. Service of other documents on companies** - A document, other than a document in any legal proceedings, may be served on a company as follows:

- (a) By any of the methods set out in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (e) of subsection (1) of section 207; or
- (b) By posting it to the company's postal address; or
- (c) By sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or its head office or principal place of business.

**209. Service of documents on overseas companies in legal proceedings** - A document, including a writ, summons, notice, or order, in any legal proceedings may be served on an overseas company in Samoa as follows:

- (a) By delivery to a person named in the overseas register as a director of the overseas company and who is resident in Samoa; or
- (b) By delivery to a person named in the overseas register as being authorised to accept service in Samoa of documents on behalf of the overseas company; or
- (c) By delivery to an employee of the overseas company at the overseas company's place of business in Samoa or, if the overseas company has more than 1 place of business in Samoa, at the overseas company's principal place of business in Samoa; or
- (d) By serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
- (e) In accordance with an agreement made with the overseas company.



**210. Service of other documents on overseas companies-**

A document, other than a document in any legal proceedings, may be served on an overseas company as follows:

- (a) By any of the methods set out in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (e) of subsection (1) of section 209; or
- (b) By posting it to the postal address in Samoa of the overseas company; or
- (c) By posting it to the postal address of a person named in the overseas register as being authorised to accept service in Samoa of documents on behalf of the overseas company; or
- (d) By sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in Samoa of the overseas company.

**211. Service of documents on shareholders and creditors-**(1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may be:

- (a) Delivered to that person; or
- (b) Posted to that person's postal address; or
- (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 207 or section 209, as the case may be.

(3) A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:

- (a) Delivered to a person who is a principal officer of the body corporate; or
- (b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or

- (c) Delivered in such manner as the Court directs; or
- (d) Delivered in accordance with an agreement made with the body corporate; or
- (e) Posted to the postal address of the body corporate; or
- (f) Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

**212. Additional provisions relating to service-**(1) Subject to subsection (2), for the purposes of sections 207 to 210:

- (a) If a document is to be served by delivery to a natural person, service must be made -
  - (i) by handing the document to the person; or
  - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person:
- (b) A document which is posted is deemed to be received 5 working days after it is posted;
- (c) A document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent;
- (d) In proving service of a document by post, it is sufficient to prove that -
  - (i) the document was properly addressed; and
  - (ii) all postal or delivery charges were paid; and
  - (iii) the document was posted;
- (e) In proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned.

(2) A document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

**213. Privileged communications-**(1) Nothing in this Act requires a legal practitioner to disclose a privileged communication.

(2) For the purposes of this Act, a communication is a privileged communication only if:

- (a) It is a confidential communication, whether oral or written, passing between -
  - (i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or
  - (ii) a legal practitioner in his or her professional capacity and his or her client -whether made directly or indirectly through an agent; and
- (b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (c) It is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

(3) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.

(4) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

(5) For the purposes of this Act, the term “legal practitioner” means a barrister or solicitor of the Supreme Court, and references to a legal practitioner include a firm in which he or she is a partner or is held out to be a partner.

**214. Regulations** - The Head of State, acting on the advice of Cabinet, may make regulations for all or any of the following purposes:

- (a) Prescribing forms for the purposes of this Act; and those regulations may require -
  - (i) the inclusion in, or attachment to, forms of specified information or documents;
  - (ii) forms to be signed by specified persons;
- (b) Prescribing requirements, not inconsistent with this Act, with which documents delivered for registration must comply;
- (c) Providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.

## **SCHEDULES**

### **FIRST SCHEDULE**

#### **MODEL ARTICLES FOR PRIVATE COMPANY**

**A GENERAL PROVISIONS**

**1 Name of company**

- 1.1 The name of the company at the time of registration under the Companies Act 2001 appears on the application for registration or for reregistration, as the case may be.
- 1.2 The name of the company may be changed in accordance with section 6 of the Act only with the prior approval of all shareholders.

**2 The company is a private company**

- 2.1 The company is a private company.
- 2.2 The company must not offer any of its shares or other securities to the public.
- 2.3 The company must not have more than 100 shareholders. If a share transfer is presented to the company for entry on the share register which would result in a breach of this restriction, the directors must decline to register the transfer.

**3 The company's Articles**

- 3.1 The company may adopt new Articles in place of these Articles by special resolution, in accordance with section 14(2) of the Act.
- 3.2 Subject to the provisions of the Act:
- (a) These Articles have effect and may be enforced as if they constituted a contract -
    - (i) between the company and its shareholders; and
    - (ii) between the company and each director; and
  - (b) The shareholders and directors of the company have the rights, powers, duties, and obligations set out in these Articles.

**B SHARES AND SHAREHOLDERS****4 Shares**

- 4.1 At the time of registration under the Act the company has the number of shares specified in the application for registration or reregistration, as the case may be.
- 4.2 Subject to Article 4.6, each share carries the following rights:
- (a) The right to one vote on a poll at a meeting of the company on any resolution, including any resolution to -
    - (i) appoint or remove a director or auditor:
    - (ii) adopt new Articles:
    - (iii) alter the company's Articles:
    - (iv) approve a major transaction:
    - (v) approve an amalgamation of the company:
    - (vi) approve reregistration of the company as a public company:
    - (vii) put the company into liquidation:
    - (viii) approve the transfer of registration of the company to another country;
  - (b) The right to an equal share in dividends paid by the company;

- (c) The right to an equal share in the distribution of the surplus assets of the company in a liquidation.
- 4.3 If the company was first registered under Part II of the Act, the company must forthwith after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.
- 4.4 The directors may issue shares:
- (a) In accordance with Article 4.5; or
  - (b) To shareholders or any other persons on any other basis, with the prior approval of all shareholders.
- 4.5 The directors may issue shares in accordance with the following process:
- (a) The shares must first be offered to all shareholders proportionally, pursuant to an offer that if accepted by all shareholders would not affect relative voting or distribution rights, on such terms as the directors think fit. The shareholders must have a reasonable opportunity to consider and respond to the offer;
  - (b) Any shares not accepted by the shareholders to whom they were offered under paragraph (a) must then be offered to those shareholders who did accept the shares offered to them under paragraph (a), on a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under paragraph (a);
  - (c) Any shares offered under paragraph (b) but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).
- 4.6 With the prior approval of all shareholders, the company may issue more than one class of shares. In particular, shares may be issued which:
- (a) Are redeemable; or

- (b) Confer preferential rights to distributions of capital or income; or
  - (c) Confer special, limited, or conditional voting rights; or
  - (d) Do not confer voting rights.
- 4.7 If the company issues shares, it must give the prescribed notice to the Registrar under section 20(2) of the Act within 10 working days of the issue of any shares. If the rights attached to the shares differ from those set out in Article 4.2, the notice must be accompanied by a document setting out the terms of issue of the shares.
- 4.8 The shares of the company are, subject to Articles 6.1 and 7.4 and their terms of issue, transferable by entry in the share register in accordance with Articles 7.1 to 7.3.

## **5 Share register**

- 5.1 The company must maintain a share register that records the shares issued by the company and states:
- (a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and
  - (b) The number of shares of each class held by each shareholder within the last 7 years; and
  - (c) The date of any -
    - (i) issue of shares to; or
    - (ii) repurchase or redemption of shares from; or
    - (iii) transfer of shares by or to -each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- 5.2 The share register must be kept:
- (a) In a form that complies with Article 45; and
  - (b) At the company's registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 98 of the Act.
- 5.3 The company may appoint an agent to maintain the share register.
- 5.4 No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

- 5.5 The company must treat the registered holder of a share as the only person entitled to:
- (a) Exercise the right to vote attaching to the share; and
  - (b) Receive notices; and
  - (c) Receive a distribution in respect of the share; and
  - (d) Exercise the other rights and powers attaching to the share.
- 5.6 Where a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share. Where the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.
- 5.7 Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares upon making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

## **6 Pre-emptive rights on sale of shares**

- 6.1 A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell them to the other holders of shares of the same class in accordance with the procedure set out in Articles 6.2 to 6.8, unless all the other shareholders agree otherwise. Any share transfer delivered to the company by a shareholder who has not complied with this requirement is of no effect, and the transfer must not be entered on the share register.
- 6.2 A shareholder who wishes to dispose of some or all of his or her shares ("the selling shareholder") must give written notice to the company of the number of shares to be sold, and the price at which the selling shareholder is willing to sell the shares.
- 6.3 The company must within 10 working days give a copy of this notice to each shareholder, together with a notice advising each holder of shares of the same class:



- (a) That that shareholder is entitled to purchase a proportional number of the shares which the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors);
  - (b) That if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.
- 6.4 The notice referred to in Article 6.3 is deemed to be an offer by the selling shareholder to the recipient to sell the number of shares referred to in the notice at the price specified by the selling shareholder in the notice given under Article 6.2, on the terms set out in these articles.
- 6.5 Subject to Article 6.8, if a notice is given by a shareholder within the specified time agreeing to purchase the shares offered to that shareholder in a notice given under Article 6.3:
  - (a) There is deemed to be a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares;
  - (b) The company must forthwith advise the selling shareholder of the acceptance, and send him or her a copy of the notice given under Article 6.3 by the company and the notice of acceptance given by the shareholder in question.
- 6.6 If any shareholder does not give notice agreeing to purchase the shares offered to that shareholder within the specified time, the shares that were offered to that shareholder must be offered to those shareholders who did accept the shares offered to them, on a fair and equitable basis determined by the directors. Articles 6.4 and 6.5 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this Article.
- 6.7 If no shareholder wishes to purchase the selling shareholder's shares at the specified price, the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder, sell some

or all of those shares to any other person at a price not less than the specified price. The directors may require reasonable evidence of the terms (including price) on which the shares were sold to accompany any share transfer in respect of those shares.

- 6.8 The selling shareholder is not obliged to sell some only of the shares that he or she wishes to dispose of. In the event that the selling shareholder has not been notified under Article 6.5 of acceptances by other shareholders in respect of all the shares referred to in the notice given under Article 6.2 within 40 working days of the date on which that notice was given to the company, the selling shareholder may at his or her option give written notice to the company terminating the offer to sell the shares to the other shareholders. If such a notice is given, Article 6.7 applies as if no shareholder had wished to purchase the selling shareholder's shares.

## **7 Transfer of shares**

- 7.1 Where shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company
- 7.2 The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.
- 7.3 Subject to Articles 6.1 and 7.4, the company must forthwith upon receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.
- 7.4 The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid. If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within five working days of the date of the resolution.

**8 Share certificates**

- 8.1 A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- 8.2 On receipt of an application for a share certificate under Article 8.1, the company must, within 20 working days after receiving the application:
- (a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
  - (b) In all cases send to the shareholder a certificate stating -
    - (i) the name of the company; and
    - (ii) the class of shares held by the shareholder; and
    - (iii) the number of shares held by the shareholder to which the certificate relates.
- 8.3 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by:
- (a) The share certificate relating to the share; or
  - (b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.
- 8.4 Where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

**9 Meetings of shareholders**

- 9.1 Articles 10 to 19 set out the procedure to be followed at and in relation to meetings of shareholders.

- 9.2 A meeting of shareholders may determine its own procedure, to the extent that it is not governed by these Articles.

## **10 Notice of meetings**

- 10.1 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than ten working days before the meeting.
- 10.2 The notice must set out:
- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (b) The text of any special resolution to be submitted to the meeting.
- 10.3 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- 10.4 An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.
- 10.5 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

## **11 Methods of holding meetings**

- 11.1 A meeting of shareholders may be held either:
- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- (b) By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

## **12 Quorum**

- 12.1 Subject to Article 12.3, no business may be transacted at a meeting of shareholders if a quorum is not present.
- 12.2 A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 12.3 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

## **13 Chairperson**

- 13.1 If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.
- 13.2 If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

## **14 Voting**

- 14.1 In the case of a meeting of shareholders held under Article 11.1(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting:

- (a) Voting by voice; or
  - (b) Voting by show of hands.
- 14.2 In the case of a meeting of shareholders held under Article 11.1(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.
- 14.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with Article 14.4.
- 14.4 At a meeting of shareholders a poll may be demanded by:
- (a) Not fewer than 5 shareholders having the right to vote on the question at the meeting; or
  - (b) A shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote on the question at the meeting.
- 14.5 A poll may be demanded either before or after a vote is taken on a resolution.
- 14.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.
- 14.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.

## **15 Proxies**

- 15.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- 15.2 A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.
- 15.3 A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.
- 15.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

**16 Corporations may act by representatives**

- 16.1 A corporation which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation. The notice must state whether the appointment is for a particular meeting, or for a specified term.

**17 Minutes**

- 17.1 The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 17.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

**18 Votes of joint holders**

- 18.1 Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

**19 Annual meetings and special meetings of shareholders**

- 19.1 Subject to Articles 19.3 and 20.2, the directors must call an annual meeting of the company to be held:
- (a) Once in each calendar year; and
  - (b) Not later than 5 months after the balance date of the company (or, if the time for completing the financial statements of the company has been extended under Article 49.1, not later than 20 working days after the financial statements are required to be completed); and
  - (c) Not later than fifteen months after the previous annual meeting.
- 19.2 The meeting must be held on the date on which it is called to be held.
- 19.3 The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within eighteen months of its incorporation.

- 19.4 A special meeting of shareholders entitled to vote on an issue:
- (a) May be called at any time by a director; and
  - (b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than five % of the votes which may be cast on that issue.

## **20 Written resolutions of shareholders**

- 20.1 A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more shareholders.
- 20.2 The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with Article 20.1.
- 20.3 Within five working days of a resolution being passed under Article 20.1, the company must send a copy of the resolution to every shareholder who did not sign it.
- 20.4 A resolution may be signed under Article 20.1 without any prior notice being given to shareholders.

## **21 Voting in interest groups**

- 21.1 Where the company proposes to take action which affects the rights attached to shares within the meaning of section 49 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 50(3) of the Act.

## **22 Shareholders entitled to receive distributions, exercise pre-emptive rights, and attend and vote at meetings**

### *Dividends*

- 22.1 The shareholders who are entitled to receive distributions are:



- (a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
  - (b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the distribution is approved.
- 22.2 A date fixed under Article 22.1(a) must not precede by more than twenty working days the date on which the proposed action will be taken.

***Pre-emptive rights***

- 22.3 The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with Article 6.1 are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under Article 6.2.

***Notice of meetings and voting***

- 22.4 The shareholders who are entitled to receive notice of a meeting of shareholders are:
- (a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
  - (b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- 22.5 A date fixed under Article 22.4(a) must not precede by more than thirty working days the date on which the meeting is to be held.
- 22.6 Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:

- (a) If a date has been fixed under Article 22.4(a), as at that date; or
  - (b) If no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.
- 22.7 A person named in a list prepared under Article 22.6 is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:
- (a) That person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and
  - (b) The transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under Article 21.6.
- 22.8 A shareholder may on two working days' notice examine any list prepared under Article 22.6 during normal business hours at the registered office of the company.

## **23 Distributions to shareholders**

- 23.1 The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made:
- (a) The company will be able to pay its debts as they become due in the normal course of business; and
  - (b) The value of the company's assets will not be less than the value of its liabilities.
- 23.2 Subject to Article 23.1 and to the terms of issue of any shares, the company may pay a dividend to shareholders:
- (a) Of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or

(b) On any other basis, with the prior approval of all shareholders.

23.3 A distribution made in breach of Articles 23.1 or 23.2 may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 23 of the Act.

## **24 Company may acquire its own shares and provide financial assistance**

24.1 The company may agree to acquire its own shares from a shareholder:

- (a) With the prior approval of all shareholders; and
- (b) Subject to the solvency test in article 23.1.

24.2 Where the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

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

- (a) After providing the assistance, the company will satisfy the solvency test in Article 22.1; and
- (b) All shareholders have approved the giving of the assistance.

## **25 Annual report to shareholders**

25.1 Subject to Article 24.2, the directors of the company must, within 20 working days after the date on which the company is required to complete its financial statements under section 111:

- (a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and
- (b) Send a copy of that report to each shareholder.

25.2 The directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company prior to the end of that accounting period requiring such a report to be prepared. If the directors are not required to prepare an

annual report in respect of an accounting period by virtue of this Article, they must send a notice to each shareholder to that effect within the period referred to in Article 25.1.

25.3 Every annual report for the company must:

- (a) Be in writing and be dated; and
- (b) Include financial statements for the accounting period which comply with section 111; and
- (c) Where an auditor's report is required under section 112 in relation to the financial statements included in the report, include that auditor's report; and
- (d) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
- (e) Contain such other information as may be required by regulations made under the Act; and
- (f) Be signed on behalf of the directors by 2 directors of the company or, if the company has only one director, by that director.

**26 Deemed approval by all shareholders for certain purposes**

26.1 For the purposes of Articles 4.4, 4.6, 24.1, and 24.3, a decision is deemed to have been approved by all shareholders if:

- (a) Notice of the proposed decision has been given to all shareholders in accordance with Article 54; and
- (b) No shareholder has responded within 10 working days objecting to that decision; and
- (c) Shareholders entitled to cast not less than 75% of the votes in relation to a resolution to alter these Articles have responded within 10 working days approving that decision.

**C DIRECTORS****27 Appointment and removal of directors**

- 27.1 The shareholders may by ordinary resolution fix the number of directors of the company.
- 27.2 A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with Article 20.1.
- 27.3 A director vacates office if he or she:
- (a) Resigns in accordance with Article 27.4; or
  - (b) Is removed from office in accordance with Article 27.2; or
  - (c) Becomes disqualified from being a director under section 67 of the Act; or
  - (d) Dies.
- 27.4 A director may resign by delivering a signed written notice of resignation to the registered office of the company. Subject to Articles 27.5 and 27.6, the notice is effective when it is received at the registered office, or at any later time specified in the notice.
- 27.5 Where the company has only one director, that director may not resign:
- (a) Until that director has called a meeting of shareholders to receive notice of the resignation; or
  - (b) If the company has only one shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.
- 27.6 A notice of resignation given by the sole director of the company does not take effect, notwithstanding its terms, until the earlier of the appointment of another director of the company or:
- (a) The time and date for which the meeting of shareholders is called under Article 26.5(a); or
  - (b) If the company has only one shareholder, 10 working days after notice of the resignation has been given to that shareholder.
- 27.7 The company must ensure that notice in the prescribed form of:

- (a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or
  - (b) A change in the name or the residential address of a director of the company -
- is delivered to the Registrar. In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

## **28 Powers and duties of directors**

- 28.1 Subject to section 46 of the Act, which relates to major transactions, the business and affairs of the company must be managed by, or under the direction or supervision of, the directors. The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.
- 28.2 The directors may delegate any of their powers to a committee of directors, or to a director or employee. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.
- 28.3 The provisions of these Articles relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.
- 28.4 The directors have the duties set out in the Act, and in particular:
- (a) Each director must act in good faith and in a manner that the director believes to be in the interests of the company;
  - (b) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these Articles.

## **29 Standard of care of directors**

- 29.1 A director of the company, when exercising powers or performing duties as a director, must exercise the care,

diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

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

### **30 Obligations of directors in connection with insolvency**

30.1 A director of the company who:

- (a) Believes that the company is unable to pay its debts as they fall due; or
- (b) Is aware of matters which would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due,

must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 65 of the Act.

30.2 At a meeting called under section 65 of the Act the directors must consider whether to appoint an administrator or liquidator, or to continue to carry on the business of the company.

### **31 Interested directors**

31.1 A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless:

- (a) The Act expressly authorises the director to exercise the relevant power notwithstanding such an interest; or
- (b) The director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either -
  - (i) these Articles expressly authorise the director to exercise the relevant power notwithstanding such an interest; or

(ii) the matter in question has been approved by shareholders under section 47, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

- 31.2 A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing:
- (a) If there is at least one other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company;
  - (b) If paragraph (a) does not apply, to all shareholders other than the director.
- 31.3 A director may give a general disclosure in writing to all other shareholders that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of Article 31.2.
- 31.4 A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 90.
- 31.5 A transaction entered into by the company as the result of action taken by a director in breach of section 59 or section 60 or section 61 is voidable at the option of the company in accordance with section 91.

## **32 Use and disclosure of company information**

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



- (a) In the interests of the company; or
- (b) As required by law; or
- (c) Where there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action-
  - (i) is approved by all shareholders under section 47 of the Act; or
  - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by shareholders by ordinary resolution. No director may vote on a resolution to approve such terms in relation to himself or herself.

### **33 Indemnities and insurance for directors or employees**

33.1 Subject to section 71, the company may provide an indemnity or purchase insurance for a director of the company or of a related company:

- (a) With the approval of shareholders by ordinary resolution. No director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
- (b) With the approval of all shareholders under section 47.

33.2 In Article 33.1:-

“Director” includes:

- (a) A person who is liable under any of sections 59 to 65 by virtue of section 71;
- (b) A former director:

“Indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and “indemnity” has a corresponding meaning.

### **34 Remuneration of directors**

34.1 Directors may receive remuneration and other benefits from the company:

- (a) With the approval of shareholders by ordinary resolution. No director may vote on a resolution concerning remuneration or benefits to be received by him or her; or
- (b) With the approval of all shareholders under section 47.

### **35 Procedure at meetings of directors**

- 35.1 Articles 36 to 42 set out the procedure to be followed at meetings of directors.
- 35.2 A meeting of directors may determine its own procedure, to the extent that it is not governed by these Articles.

### **36 Chairperson**

- 36.1 The directors may elect one of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.
- 36.2 If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

### **37 Notice of meeting**

- 37.1 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this Article.
- 37.2 Not less than 24 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.
- 37.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

### **38 Methods of holding meetings**

- 38.1 A meeting of directors may be held either:

- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### **39 Quorum**

- 39.1 A quorum for a meeting of directors is a majority of the directors.
- 39.2 No business may be transacted at a meeting of directors if a quorum is not present.

### **40 Voting**

- 40.1 Every director has one vote.
- 40.2 The chairperson has a casting vote.
- 40.3 A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.
- 40.4 A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

### **41 Minutes**

- 41.1 The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

### **42 Unanimous resolution**

- 42.1 A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- 42.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

42.3 A copy of any such resolution must be entered in the minute book of the directors' proceedings.

**43 Managing director and other executive directors**

43.1 The directors may from time to time appoint a director as managing director for such period and on such terms as they think fit.

43.2 Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

43.3 A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

43.4 Subject to shareholder approval in accordance with Article 34, the managing director may be paid such remuneration as he or she may agree with the directors. The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

43.5 The directors may delegate to the managing director, subject to any conditions or restrictions which they consider appropriate, any of their powers which can be lawfully delegated. Any such delegation may at any time be withdrawn or varied by the directors. The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

43.6 Subject to shareholder approval in accordance with Article 34, a director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors. The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

**D COMPANY RECORDS****44 Company records**

- 44.1 The company must keep the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 98:
- (a) The Articles of the company;
  - (b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
  - (c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
  - (d) The full names and residential and postal addresses of the current directors;
  - (e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 52;
  - (f) Copies of all financial statements required to be completed under section 111 for the last 7 completed accounting periods of the company;
  - (g) The accounting records required by section 110 for the current accounting period and for the last 7 completed accounting periods of the company;
  - (h) The share register.
- 44.2 The references in paragraphs (b), (c), and (e), of Article 43.1 to 7 years and the references in paragraphs (f) and (g) of that Article to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 96(2).

**45 Form of records**

- 45.1 The records of the company must be kept:
- (a) In written form; or
  - (b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

- 45.2 The directors must ensure that adequate measures exist to:
- (a) Prevent the records being falsified; and
  - (b) Detect any falsification of them.

#### **46 Access to records**

- 46.1 The directors of the company are entitled to access to the company's records in accordance with section 99 of the Act.
- 46.2 A shareholder of the company is entitled:
- (a) To inspect the documents referred to in section 100 of the Act, in the manner specified in section 102 of the Act; and
  - (b) To require copies of or extracts from any document which he or she may inspect within five working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company. The fee may be determined by any director, subject to any directions from the directors.

#### **47 Documents to be sent to the Registrar**

- 47.1 In addition to any annual return required under section 103 of the Act, the company must send the following documents to the Registrar under the Act:
- (a) Notice of the adoption of new Articles by the company, or the alteration of the Articles of the company, under section 14;
  - (b) Notice of the issue of shares by the company, under section 20;
  - (c) Notice of the acquisition by the company of its own shares, under section 25;
  - (d) Notice of the redemption of a share, under section 29;
  - (e) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 70;
  - (f) Notice of the making of an order under section 81 altering or adding to the Articles of a company;

- (g) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 98;
- (h) Notice of a change in the registered office of the company, under section 108;
- (i) Documents requested by the Registrar under section 187.

#### **48 Documents to be sent to shareholders**

- 48.1 In addition to any annual report required under section 52 of the Act, the company must send the following documents to shareholders under the Act:
- (a) Notice of any repurchase of shares to which section 25(4) applies;
  - (b) Notice of a written resolution approved under section 49;
  - (c) Financial statements required to be sent under section 111;
  - (d) Any written statement by an auditor under section 114(1)(a);
  - (e) Any report by an auditor under section 116.

### **E ACCOUNTS AND AUDIT**

#### **49 Accounting records to be kept**

- 49.1 The directors of the company must cause accounting records to be kept that:
- (a) Correctly record and explain the transactions of the company; and
  - (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
  - (c) Will enable the directors to ensure that the financial statements of the company comply with section 111 of the Act; and
  - (d) Will enable the financial statements of the company to be readily and properly audited.
- 49.2 Without limiting Article 48.1, the accounting records must contain:

- (a) Entries of money received and spent each day and the matters to which it relates;
  - (b) A record of the assets and liabilities of the company;
  - (c) If the company's business involves dealing in goods-
    - (i) a record of goods bought and sold, and relevant invoices;
    - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year;
  - (d) If the company's business involves providing services, a record of services provided and relevant invoices.
- 49.3 If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:
- (a) Invoices need not be kept in respect of each retail transaction for the purposes of Article 49.2; and
  - (b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with Article 49.2 in respect of those transactions.
- 49.4 The accounting records must be kept:
- (a) In a form permitted under Article 45; and
  - (b) At the registered office of the company, or any other place permitted under section 98.

## **50 Financial statements to be prepared**

50.1 The directors must ensure that:

- (a) Within 4 months after the balance date of the company, or with the approval of shareholders by special resolution, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with Article 50.2 are completed in relation to the company and that balance date; and
- (b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent



to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 52.

- 50.2 The financial statements of the company:
- (a) Must give a true and fair view of the matters to which they relate; and
  - (b) Must comply with any applicable regulations in relation to the form or content of financial statements made under the Act; and
  - (c) Must be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- 50.3 The period between:
- (a) The date of incorporation of the company and its first balance date; or
  - (b) Any two balance dates of the company, must not exceed 15 months.
- 50.4 In these Articles, the term “financial statements”, in relation to the company and a balance date, means:
- (a) A statement of financial position for the entity as at the balance date; and
  - (b) In the case of -
    - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
    - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
  - (c) If required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
  - (d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act -

together with any notes or documents giving information relating to the statement of financial position and other statements.

## **51 Appointment of auditor**

51.1 If required to do so under Article 51.2, the company must appoint an auditor who is qualified to hold that office under section 113 of the Act to:

- (a) Audit the financial statements of the company in respect of an accounting period; and
- (b) Hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under Article 50.3.

51.2 The company must appoint an auditor within 30 working days if:

- (a) A shareholder or shareholders holding shares which together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of an accounting period requiring the financial statements of the company for that period to be audited; or
- (b) A vacancy in the office of auditor arises before the financial statements in respect of a period for which an audit is required have been audited.

51.3 An auditor ceases to hold office if he or she:

- (a) Resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
- (b) Is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 114(2) of the Act; or
- (c) Becomes disqualified from being the auditor of the company under section 113; or
- (d) Dies; or

- (e) Is adjudged to be mentally defective under the Mental Health Ordinance 1961; or
  - (f) Ceases to hold office under Article 50.5; or
  - (g) Is removed by all shareholders in accordance with Article 51.6.
- 51.4 An auditor may be appointed:
- (a) By ordinary resolution; or
  - (b) If the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must within 10 working days give notice of the appointment to all shareholders.
- 51.5 If the company is required to appoint an auditor in respect of an accounting period, but is not required to do so in respect of a subsequent accounting period:
- (a) The audit of the financial statements of the company for the accounting period in respect of which an audit is required must be completed in accordance with this section;
  - (b) The directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that the company is no longer required to appoint an auditor, and that the auditor will cease to hold office unless a notice is given by shareholders under Article 51.2(a) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given;
  - (c) If a notice has been given under paragraph (b), and no notice under Article 51.2(a) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of -
    - (i) the date specified in the notice; or
    - (ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.
- 51.6 Notwithstanding the other provisions of Article 51, all shareholders may agree in writing:
- (a) To dispense with an audit for any accounting period; and

- (b) To remove the auditor of the company.
- 51.7 The fees payable to the auditor must be agreed between the auditor and the directors.

**52 Auditor's attendance at shareholders' meeting**

- 52.1 The directors must ensure that an auditor of the company:
- (a) Is permitted to attend a meeting of shareholders of the company; and
  - (b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
  - (c) May be heard at a meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

**F LIQUIDATION AND REMOVAL FROM THE REGISTER**

**53 Resolution to appoint liquidator**

- 53.1 The shareholders may resolve to liquidate the company by special resolution.
- 53.2 The directors may resolve to liquidate the company at a meeting called under section 65 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

**54 Distribution of surplus assets**

- 54.1 The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.
- 54.2 The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose the liquidator may set such value as he or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

**G MISCELLANEOUS****55 Service of documents on shareholders**

- 55.1 A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:
- (a) Delivered to that person; or
  - (b) Posted to that person's postal address; or
  - (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.
- 55.2 A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 207 or section 209 of the Act, as the case may be.

**56 Interpretation**

- 56.1 In these Articles, "the Act" means the Companies Act 2001.
- 56.2 Terms which are defined in the Act have the same meaning in these Articles.

**SECOND SCHEDULE****MODEL ARTICLES FOR SINGLE  
SHAREHOLDER COMPANY****A GENERAL PROVISIONS****1 Name of company**

- 1.1 The name of the company at the time of registration under the Companies Act 2001 appears on the application for registration or for reregistration, as the case may be.
- 1.2 The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of the shareholder.

**2 The company is a private company with one shareholder**

- 2.1 The company is a private company.

- 2.2 The company must not offer any of its shares or other securities to the public.
- 2.3 The company has one shareholder. These Articles are designed for a company with one shareholder: if the company proposes to increase the number of shareholders, it must first adopt new Articles.
- 2.4 The company must not have more than one shareholder. If a share transfer is presented to the company for entry on the share register which would result in a breach of this restriction, the directors must decline to register the transfer.

### **3 The company's Articles**

- 3.1 The company may adopt new Articles in place of these Articles by special resolution, in accordance with section 14(2) of the Act.
- 3.2 Subject to the provisions of the Act:
  - (a) These Articles have effect and may be enforced as if they constituted a contract –
    - (i) between the company and the shareholder; and
    - (ii) between the company and each director; and
  - (b) The shareholder and the directors of the company have the rights, powers, duties, and obligations set out in these Articles.

## **B SHARES AND SHAREHOLDERS**

### **4 Shares**

- 4.1 At the time of registration under the Act the company has the number of shares specified in the application for registration or reregistration, as the case may be.
- 4.2 If the company was first registered under Part II of the Act, the company must forthwith after its registration issue to the person named in the application for registration as the shareholder the number of shares specified in the application as being the number of shares to be issued to that person.

- 4.3 With the prior approval of the shareholder, the company may:
- (a) Issue shares to the shareholder;
  - (b) Issue more than one class of shares.
- 4.4 If the company issues shares, it must give the prescribed notice to the Registrar under section 20(2) of the Act within 10 working days of the issue of any shares. If the rights attached to the shares differ from those set out in section 17(2) of the Act, the notice must be accompanied by a document setting out the terms of issue of the shares.
- 4.5 The shares of the company are, subject to Article 6.4 and their terms of issue, transferable by entry in the share register in accordance with Articles 6.1 to 6.3.

## **5 Share register**

- 5.1 The company must maintain a share register that records the shares issued by the company and states:
- (a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and
  - (b) The number of shares of each class held by each shareholder within the last 7 years; and
  - (c) The date of any -
    - (i) issue of shares to; or
    - (ii) repurchase or redemption of shares from; or
    - (iii) transfer of shares by or to -each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- 5.2 The share register must be kept:
- (a) In a form that complies with Article 30; and
  - (b) At the company's registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 98 of the Act.
- 5.3 The company may appoint an agent to maintain the share register.

- 5.4 No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- 5.5 The company must treat the registered holder of a share as the only person entitled to:
- (a) Exercise the right to vote attaching to the share; and
  - (b) Receive notices; and
  - (c) Receive a distribution in respect of the share; and
  - (d) Exercise the other rights and powers attaching to the share.
- 5.6 Where a shareholder dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.
- 5.7 Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares upon making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

## **6 Transfer of shares**

- 6.1 Where shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.
- 6.2 The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.
- 6.3 Subject to Article 6.4, the company must forthwith upon receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.
- 6.4 The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid. If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within five working days of the date of the resolution.



**7 Share certificates**

- 7.1 The shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- 7.2 On receipt of an application for a share certificate under Article 8.1, the company must, within 20 working days after receiving the application:
- (a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the shareholder into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
  - (b) In all cases send to the shareholder a certificate stating -
    - (i) the name of the company; and
    - (ii) the class of shares held by the shareholder; and
    - (iii) the number of shares held by the shareholder to which the certificate relates.
- 7.3 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by:
- (a) The share certificate relating to the share; or
  - (b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.
- 7.4 Where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

**8 Shareholder decisions and exercise of shareholder powers**

- 8.1 A resolution in writing signed by the shareholder is as valid as if it had been passed at a meeting of shareholders.

**9 Distributions to shareholders**

- 9.1 The payment of a dividend or the making of any other distribution must be approved by the shareholder. A distribution must comply with Article 9.2.
- 9.2 The company must not make a distribution to the shareholder unless there are reasonable grounds for believing that, after that distribution is made:
- (a) The company will be able to pay its debts as they become due in the normal course of business; and
  - (b) The value of the company's assets will not be less than the value of its liabilities.
- 9.3 A distribution made in breach of Article 9.2 may be recovered by the company from the shareholder, in accordance with section 23 of the Act.

**10 Company may acquire its own shares and provide financial assistance**

- 10.1 The company may agree to acquire its own shares from the shareholder, subject to the solvency test in article 9.2:
- 10.2 Where the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.
- 10.3 The company may give financial assistance to the shareholder for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if after providing the assistance, the company will satisfy the solvency test in Article 9.2.

**11 Annual report to shareholders**

- 11.1 The directors of the company are not required to prepare an annual report in respect of any accounting period, unless requested to do so by the shareholder by notice in writing.

**C DIRECTORS****12 Appointment and removal of directors**

- 12.1 The shareholder may fix the number of directors of the company by notice in writing to the company.
- 12.2 A director may be appointed or removed by the shareholder by notice in writing to the company.
- 12.3 A director vacates office if he or she:
- (a) Resigns in accordance with Article 12.4; or
  - (b) Is removed from office in accordance with Article 12.2; or
  - (c) Becomes disqualified from being a director under section 67 of the Act; or
  - (d) Dies.
- 12.4 A director may resign by delivering a signed written notice of resignation to the registered office of the company and to the shareholder. Subject to Article 12.5, the notice is effective when it is received at the registered office, or at any later time specified in the notice.
- 12.5 Where the company has only one director, that director may not resign until that director has given not less than 10 working days written notice of the resignation to the shareholder. A notice of resignation given by the sole director of the company does not take effect, notwithstanding its terms, until the earlier of:
- (a) The expiry of 10 working days after written notice of the resignation has been given to the shareholder; or
  - (b) The appointment of another director of the company.
- 12.6 The company must ensure that notice in the prescribed form of:
- (a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or
  - (b) A change in the name or the residential address of a director of the company -

is delivered to the Registrar. In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

### **13 Powers and duties of directors**

#### **13.1 Subject to:**

- (a) Section 46 of the Act, which relates to major transactions; and
- (b) Any directions given to the board in writing by the shareholder,-

the business and affairs of the company must be managed by, or under the direction or supervision of, the directors. The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

#### **13.2 The directors may delegate to a committee of directors, or to a director or employee, any of their powers. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.**

#### **13.3 The provisions of these Articles relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.**

#### **13.4 The directors have the duties set out in the Act, and in particular:**

- (a) Each director must act in good faith and in a manner that the director believes to be in the interests of the company;
- (b) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these Articles.

### **14 Standard of care of directors**

#### **14.1 A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:**

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

## **15 Obligations of directors in connection with insolvency**

15.1 A director of the company who:

- (a) Believes that the company is unable to pay its debts as they fall due; or
- (b) Is aware of matters which would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due,

must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 65 of the Act.

15.2 At a meeting called under section 65 of the Act the directors must consider whether to appoint an administrator or liquidator, or to continue to carry on the business of the company.

## **16 Interested directors**

16.1 A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless the matter in question has been approved by the shareholder.

16.2 A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 90.

16.3 A transaction entered into by the company as the result of action taken by a director in breach of section 59 or section 60 or section 61 is voidable at the option of the company in accordance with section 91.

**17 Use and disclosure of company information**

- 17.1 A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- (a) In the interests of the company; or
  - (b) As required by law; or
  - (c) To the shareholder; or
  - (d) Where there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action-
    - (i) is approved by the shareholder; or
    - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by the shareholder.

**18 Indemnities and insurance for directors or employees**

- 18.1 Subject to section 71, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of the shareholder.
- 18.2 In Article 18.1:
- “Director” includes:
- (a) A person who is liable under any of sections 59 to 65 by virtue of section 71;
  - (b) A former director:
- “Indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and “indemnity” has a corresponding meaning.

**19 Remuneration of directors**

- 19.1 Directors may receive remuneration and other benefits from the company with the approval of the shareholder.

**20 Procedure at meetings of directors**

- 20.1 Articles 28 to 34 set out the procedure to be followed at meetings of directors.
- 20.2 A meeting of directors may determine its own procedure, to the extent that it is not governed by these Articles.

**21 Chairperson**

- 21.1 The shareholder may appoint a director as chairperson of directors and may determine the period for which the chairperson is to hold office.
- 21.2 If no chairperson is appointed, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

**22 Notice of meeting**

- 22.1 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this Article.
- 22.2 Not less than 24 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.
- 22.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

**23 Methods of holding meetings**

- 23.1 A meeting of directors may be held either:
- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- (b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

**24 Quorum**

- 24.1 A quorum for a meeting of directors is a majority of the directors.
- 24.2 No business may be transacted at a meeting of directors if a quorum is not present.

**25 Voting**

- 25.1 Every director has one vote.
- 25.2 The chairperson has a casting vote.
- 25.3 A resolution of the board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.
- 25.4 A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

**26 Minutes**

- 26.1 The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

**27 Unanimous resolution**

- 27.1 A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- 27.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- 27.3 A copy of any such resolution must be entered in the minute book of the directors' proceedings.



**28 Managing director and other executive directors**

- 28.1 The shareholder may from time to time appoint a director as managing director for such period and on such terms as the shareholder thinks fit. The remuneration of the managing director must be approved by the shareholder.
- 28.2 Subject to the terms of a managing director's appointment, the shareholder may at any time cancel the appointment of a director as managing director.
- 28.3 A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.
- 28.4 The directors may, with the prior approval of the shareholder, delegate to the managing director, subject to any conditions or restrictions which they consider appropriate, any of their powers which can be lawfully delegated. Any such delegation may at any time be withdrawn or varied by the directors. The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.
- 28.5 A director other than the managing director who is employed by the company may be paid such remuneration as may be approved by the shareholder.

**D COMPANY RECORDS****29 Company records**

- 29.1 The company must keep the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 98:
- (a) The Articles of the company;
  - (b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
  - (c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
  - (d) The full names and residential and postal addresses of the current directors;

- (e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 52;
  - (f) Copies of all financial statements required to be completed under section 111 for the last 7 completed accounting periods of the company;
  - (g) The accounting records required by section 110 for the current accounting period and for the last 7 completed accounting periods of the company;
  - (h) The share register.
- 29.2 The references in paragraphs (b), (c), and (e), of Article 36.1 to 7 years and the references in paragraphs (f) and (g) of that Article to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 96(2).

### **30 Form of records**

- 30.1 The records of the company must be kept:
- (a) In written form; or
  - (b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- 30.2 The directors must ensure that adequate measures exist to:
- (a) Prevent the records being falsified; and
  - (b) Detect any falsification of them.

### **31 Access to records**

- 31.1 The directors of the company are entitled to access to the company's records in accordance with section 99 of the Act.
- 31.2 The shareholder of the company is entitled to access to the company's records as if that shareholder were a director.

**32 Documents to be sent to the Registrar**

- 32.1 In addition to the annual return required under section 103 of the Act, the company must send the following documents to the Registrar under the Act:
- (a) Notice of the adoption of new Articles by the company, or the alteration of the Articles of the company, under section 14;
  - (b) Notice of the issue of shares by the company, under section 20;
  - (c) Notice of the acquisition by the company of its own shares, under section 25;
  - (d) Notice of the redemption of a share, under section 29;
  - (e) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 70;
  - (f) Notice of the making of an order under section 82 altering or adding to the Articles of a company;
  - (g) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 98;
  - (h) Notice of a change in the registered office of the company, under section 108;
  - (i) Documents requested by the Registrar under section 187.

**33 Documents to be sent to the shareholder**

- 33.1 In addition to any annual report required under section 52 of the Act, the company must send the following documents to the shareholder under the Act:
- (a) Financial statements required to be sent under section 111;
  - (b) Any written statement by an auditor under section 114(1)(a);
  - (c) Any report by an auditor under section 116.

## E ACCOUNTS AND AUDIT

**34 Accounting records to be kept**

- 34.1 The directors of the company must cause accounting records to be kept that:
- (a) Correctly record and explain the transactions of the company; and
  - (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
  - (c) Will enable the directors to ensure that the financial statements of the company comply with section 111 of the Act; and
  - (d) Will enable the financial statements of the company to be readily and properly audited.
- 34.2 Without limiting Article 41.1, the accounting records must contain:
- (a) Entries of money received and spent each day and the matters to which it relates;
  - (b) A record of the assets and liabilities of the company;
  - (c) If the company's business involves dealing in goods-
    - (i) a record of goods bought and sold, and relevant invoices:
    - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year:
  - (d) If the company's business involves providing services, a record of services provided and relevant invoices.
- 34.3 If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:
- (a) Invoices need not be kept in respect of each retail transaction for the purposes of Article 34.2; and
  - (b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with Article 34.2 in respect of those transactions.
- 34.4 The accounting records must be kept:

- (a) In a form permitted under Article 37; and
- (b) At the registered office of the company, or any other place permitted under section 98.

### **35 Financial statements to be prepared**

- 35.1 The directors of every company must ensure that within 4 months after the balance date of the company or, if the shareholder agrees in writing, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with Article 43.2 are:
- (a) Completed in relation to the company and that balance date; and
  - (b) Given to the shareholder.
- 35.2 The financial statements of the company:
- (a) Must give a true and fair view of the matters to which they relate; and
  - (b) Must comply with any regulations in relation to the form or content of financial statements made under the Act; and
  - (c) Must be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- 35.3 The period between:
- (a) The date of incorporation of the company and its first balance date; or
  - (b) Any two balance dates of the company, must not exceed 15 months.
- 35.4 In these Articles, the term “financial statements”, in relation to the company and a balance date, means:
- (a) A statement of financial position for the entity as at the balance date; and
  - (b) In the case of -
    - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

- (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
- (c) If required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
- (d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act -  
together with any notes or documents giving information relating to the statement of financial position and other statements.

### **36 Appointment of auditor**

- 36.1 The shareholder may by notice in writing to the company appoint an auditor who is qualified to hold that office under section 113 of the Act to:
- (a) Hold office as auditor for the period specified in the notice; and
  - (b) Audit the financial statements of the company.
- 36.2 The shareholder may remove an auditor by notice in writing to the company and to that auditor.

### **37 Auditor's attendance at shareholders' meeting**

- 37.1 The directors of the company must ensure that an auditor of the company:
- (a) Is permitted to attend a meeting of shareholders of the company; and
  - (b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
  - (c) May be heard at a meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

**F LIQUIDATION AND REMOVAL FROM THE REGISTER****38 Resolution to appoint liquidator**

- 38.1 The shareholder may resolve to liquidate the company by special resolution.
- 38.2 The directors may resolve to liquidate the company at a meeting called under section 65 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business. The directors must give not less than 5 working days notice to the shareholder of any meeting called under section 65, and must permit the shareholder to attend and speak at that meeting.

**39 Distribution of surplus assets**

- 39.1 The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed to the shareholder.
- 39.2 The liquidator may, with the approval of the shareholder, distribute the surplus assets of the company to the shareholder in kind.

**G MISCELLANEOUS****40 Service of documents on shareholders**

- 40.1 A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:
- (a) Delivered to that person; or
  - (b) Sent by any other method approved in writing by that shareholder.
- 40.2 A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 207 or section 209 of the Act, as the case may be.

**41 Interpretation**

- 41.1 In these Articles, “the Act” means the Companies Act 2001.
- 41.2 Terms which are defined in the Act have the same meaning in these Articles.

**THIRD SCHEDULE****MODEL ARTICLES FOR PUBLIC COMPANIES****A GENERAL PROVISIONS****1 Name of company**

- 1.1 The name of the company at the time of registration under the Companies Act 2001 appears on the application for registration or for reregistration, as the case may be.
- 1.2 The name of the company may be changed in accordance with section 10 of the Act with the prior approval of the directors.

**2 The company is a public company**

- 2.1 The company is a public company.

**3 The company’s Articles**

- 3.1 The company may adopt new Articles in place of these Articles by special resolution, in accordance with section 14(2) of the Act.
- 3.2 Subject to the provisions of the Act:
- (a) These Articles have effect and may be enforced as if they constituted a contract -
    - (i) between the company and its shareholders; and
    - (ii) between the company and each director; and
  - (b) The shareholders and directors of the company have the rights, powers, duties, and obligations set out in these Articles.



**B SHARES AND SHAREHOLDERS****4 Shares**

- 4.1 At the time of registration under the Act the company has the number of shares specified in the application for registration or reregistration, as the case may be.
- 4.2 Subject to Article 4.6, each share carries the following rights:
- (a) The right to one vote on a poll at a meeting of the company on any resolution, including any resolution to -
    - (i) appoint or remove a director or auditor;
    - (ii) adopt new Articles;
    - (iii) alter the company's Articles;
    - (iv) approve a major transaction;
    - (v) approve an amalgamation of the company;
    - (vi) approve reregistration of a public company as a private company, or of a private company as a public company;
    - (vii) put the company into liquidation;
    - (viii) approve the transfer of registration of the company to another country;
  - (b) The right to an equal share in dividends paid by the company;
  - (c) The right to an equal share in the distribution of the surplus assets of the company in a liquidation.
- 4.3 If the company was first registered under Part II of the Act, the company must forthwith after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.
- 4.4 The directors may issue shares:
- (a) Pursuant to an offer made to all shareholders proportionally, that if accepted by all shareholders would not affect relative voting or distribution rights, on such terms as the directors

- think fit (including issuing shares without consideration, or in lieu of dividends). The shareholders must have a reasonable opportunity to consider and respond to the offer; or
- (b) To shareholders or any other persons for a consideration determined by the directors. The directors must use reasonable endeavours to obtain the best price reasonably obtainable for those shares.
- 4.5 The directors may issue more than one class of shares. In particular, shares may be issued which:
- (a) Are redeemable; or
  - (b) Confer preferential rights to distributions of capital or income; or
  - (c) Confer special, limited, or conditional voting rights; or
  - (d) Do not confer voting rights.
- 4.6 If the company issues shares, it must give the prescribed notice to the Registrar under section 20(2) of the Act within 10 working days of the issue of any shares. If the rights attached to the shares differ from those set out in Article 4.2, the notice must be accompanied by a document setting out the terms of issue of the shares.
- 4.7 The shares of the company are, subject to Article 6.4 and their terms of issue, transferable by entry in the share register in accordance with Articles 6.1 to 6.3.

## **5 Share register**

- 5.1 The company must maintain a share register that records the shares issued by the company and states:
- (a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and
  - (b) The number of shares of each class held by each shareholder within the last 7 years; and
  - (c) The date of any -
    - (i) issue of shares to; or
    - (ii) repurchase or redemption of shares from; or

- (iii) transfer of shares by or to:  
each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- 5.2 The share register must be kept:
- (a) In a form that complies with Article 47; and
  - (b) At the company's registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 98 of the Act.
- 5.3 The company may appoint an agent to maintain the share register.
- 5.4 No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- 5.5 The company must treat the registered holder of a share as the only person entitled to:
- (a) Exercise the right to vote attaching to the share; and
  - (b) Receive notices; and
  - (c) Receive a distribution in respect of the share; and
  - (d) Exercise the other rights and powers attaching to the share.
- 5.6 Where a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share. Where the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.
- 5.7 Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares upon making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

## **6 Transfer of shares**

- 6.1 Where shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

- 6.2 The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.
- 6.3 Subject to Articles 6. 4, the company must forthwith upon receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.
- 6.4 The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid. If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within five working days of the date of the resolution.

## **7 Share certificates**

- 7.1 A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- 7.2 On receipt of an application for a share certificate under Article 7.1, the company must, within 20 working days after receiving the application:
- (a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
  - (b) In all cases send to the shareholder a certificate stating -
    - (i) the name of the company; and
    - (ii) the class of shares held by the shareholder; and
    - (iii) the number of shares held by the shareholder to which the certificate relates.
- 7.3 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by:

- (a) The share certificate relating to the share; or
  - (b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.
- 7.4 Where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

## **8 Meetings of shareholders**

- 8.1 Articles 9 to 19 set out the procedure to be followed at and in relation to meetings of shareholders.
- 8.2 A meeting of shareholders may determine its own procedure, to the extent that it is not governed by these Articles.

## **9 Notice of meetings**

- 9.1 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than fifteen working days before the meeting.
- 9.2 The notice must set out:
- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (b) The text of any special resolution to be submitted to the meeting.
- 9.3 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- 9.4 An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

- 9.5 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

## **10 Methods of holding meetings**

- 10.1 A meeting of shareholders may be held either:
- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

## **11 Quorum**

- 11.1 Subject to Article 11.3, no business may be transacted at a meeting of shareholders if a quorum is not present.
- 11.2 A quorum for a meeting of shareholders is present if 5 or more shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 11.3 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

## **12 Chairperson**

- 12.1 If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

- 12.2 If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

### **13 Voting**

- 13.1 In the case of a meeting of shareholders held under Article 10.1(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting:
- (a) Voting by voice; or
  - (b) Voting by show of hands.
- 13.2 In the case of a meeting of shareholders held under Article 10.1(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.
- 13.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with Article 13.4.
- 13.4 At a meeting of shareholders a poll may be demanded by:
- (a) Not fewer than 5 shareholders having the right to vote on the question at the meeting; or
  - (b) A shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote on the question at the meeting.
- 13.5 A poll may be demanded either before or after a vote is taken on a resolution.
- 13.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.
- 13.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.

**14 Proxies**

- 14.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- 14.2 A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.
- 14.3 A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.
- 14.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

**15 Corporations may act by representatives**

- 15.1 A corporation which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation. The notice must state whether the appointment is for a particular meeting, or for a specified term.

**16 Postal votes**

- 16.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.
- 16.2 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.
- 16.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 16.4 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted



- to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 16.5 It is the duty of a person authorised to receive and count postal votes at a meeting:
- (a) To collect together all postal votes received by him or her or by the company; and
  - (b) In relation to each resolution to be voted on at the meeting, to count -
    - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
    - (ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
  - (c) To sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) and which sets out the results of the counts required by paragraph (b); and
  - (d) To ensure that the certificate required by paragraph (c) is presented to the chairperson of the meeting.
- 16.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- (a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
  - (b) On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- 16.7 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 16.8 The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

- 16.9 A shareholder who has submitted a postal vote on any resolution:
- (a) May attend and speak at the meeting;
  - (b) Must not vote on that resolution in person at the meeting.

**17 Minutes**

- 17.1 The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 17.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

**18 Votes of joint holders**

- 18.1 Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

**19 Annual meetings and special meetings of shareholders**

- 19.1 Subject to Articles 19.3 and 20.2, the directors must call an annual meeting of the company to be held:
- (a) Once in each calendar year; and
  - (b) Not later than 5 months after the balance date of the company; and
  - (c) Not later than fifteen months after the previous annual meeting.
- 19.2 The meeting must be held on the date on which it is called to be held.
- 19.3 The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within eighteen months of its incorporation.
- 19.4 A special meeting of shareholders entitled to vote on an issue:
- (a) May be called at any time by a director; and
  - (b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than five % of the votes which may be cast on that issue.

**20 Written resolutions of shareholders**

- 20.1 A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more shareholders.
- 20.2 The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with Article 20.1.
- 20.3 Within five working days of a resolution being passed under Article 20.1, the company must send a copy of the resolution to every shareholder who did not sign it.
- 20.4 A resolution may be signed under Article 20.1 without any prior notice being given to shareholders.

**21 Voting in interest groups**

- 21.1 Where the company proposes to take action which affects the rights attached to shares within the meaning of section 49 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 50(3) of the Act.

**22 Shareholders entitled to receive distributions and attend and vote at meetings***Dividends*

- 22.1 The shareholders who are entitled to receive dividends are:
- (a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
  - (b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the dividend is approved.

- 22.2 A date fixed under Article 22.1(a) must not precede by more than twenty working days the date on which the proposed action will be taken.

*Notice of meetings and voting*

- 22.3 The shareholders who are entitled to receive notice of a meeting of shareholders are:
- (a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
  - (b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- 22.4 A date fixed under Article 22.3(a) must not precede by more than thirty working days the date on which the meeting is to be held.
- 22.5 Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:
- (a) If a date has been fixed under Article 22.3(a), as at that date; or
  - (b) If no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.
- 22.6 A person named in a list prepared under Article 22.5 is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:
- (a) That person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and
  - (b) The transferee of those shares has been registered as the holder of those shares, and has requested

before the commencement of the meeting that his or her name be entered on the list prepared under Article 22.5.

- 22.7 A shareholder may on two working days' notice examine any list prepared under Article 22.5 during normal business hours at the registered office of the company.

### **23 Distributions to shareholders**

- 23.1 The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made:
- (a) The company will be able to pay its debts as they become due in the normal course of business; and
  - (b) The value of the company's assets will not be less than the value of its liabilities.
- 23.2 Subject to article 22.1 and to the terms of issue of any shares, the company may pay a dividend to shareholders:
- (a) Of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or
  - (b) On any other basis, with the prior approval of all shareholders.
- 23.3 A distribution made in breach of articles 23.1 or 23.2 may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 23 of the Act.
- 23.4 No dividend or other distribution bears interest against the company unless the applicable terms of issue of a share expressly provide otherwise.
- 23.5 All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the directors for the benefit of the company until claimed. The company is entitled to mingle the unclaimed distribution with other money of

the company and is not required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, must pay the distribution to the person producing evidence of entitlement to receive it.

**24 Company may acquire its own shares and provide financial assistance**

- 24.1 Subject to the solvency test, the company may agree to acquire its own shares from a shareholder:
- (a) Pursuant to an offer to acquire shares made to all holders of shares of the same class which would, if accepted by all persons to whom the offer is made, leave unaffected relative voting and distribution rights; or
  - (b) On any other basis, with the prior approval of shareholders by special resolution.
- 24.2 Where the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.
- 24.3 The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:
- (a) The company gives the assistance in the normal course of its business and on usual terms and conditions; or
  - (b) The giving of the assistance is authorised by the directors or by all shareholders under section 47, and there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test.

**25 Annual report to shareholders**

- 25.1 The directors of the company must, within 5 months after the balance date of the company:
- (a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and

- (b) Send a copy of that report to each shareholder.
- 25.2 Every annual report for the company must:
- (a) Be in writing and be dated; and
  - (b) Include financial statements for the accounting period which comply with section 111; and
  - (c) Include the auditor's report required under section 112; and
  - (d) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
  - (e) Contain such other information as may be required by regulations made under the Act; and
  - (f) Be signed on behalf of the directors by 2 directors of the company or, if the company has only one director, by that director.

#### **26 Compulsory acquisition of minority holdings below 10%**

- 26.1 A shareholder who holds 90% of the voting shares of the company ("the majority shareholder") may give a notice to the other holders of voting shares ("the minority shareholders") in accordance with this Article, requiring the minority shareholders to sell their voting shares to the majority shareholder. The majority shareholder must also give the notice to the company, and give public notice of the fact that such a notice has been given.
- 26.2 A notice may be given under this Article by a majority shareholder at any time within 6 months after that majority shareholder first becomes interested in not less than 90% of the voting shares of the company.
- 26.3 The majority shareholder must pay a price for each voting share which is:
- (a) Equal to the highest price paid for a voting share by that majority shareholder in an arms length sale and purchase of such shares during the 6 month

period ending on the date on which the majority shareholder first became interested in not less than 90% of the voting shares; or

- (b) If the majority shareholder so elects, a price to be fixed by an independent arbitrator. The majority shareholder must ask the directors of the company to nominate an independent arbitrator for this purpose. If the directors fail to do so within 10 working days of receiving such a request, the majority shareholder may nominate the arbitrator.
- 26.4 A notice given under this Article must specify:
- (a) The name of the majority shareholder;
  - (b) The date on which the majority shareholder first became interested in not less than 90% of the voting shares of the company;
  - (c) If the price to be paid for each voting share has been determined under Article 26.3(a), that price, which must be certified by the majority shareholder as meeting the requirements of Article 26.3(a);
  - (d) If the price to be paid for each voting share is to be fixed by an arbitrator under Article 26.3(b), the name of the arbitrator and the date on which and place at which the arbitration is to be held. That date must not be less than 60 working days from the date on which the notice is given to minority shareholders. The notice must also specify the rights of minority shareholders under Article 26.6.
- 26.5 Where the price to be paid for each voting share has been determined under Article 26.3(a), a notice given under Article 26.1 must also:
- (a) Specify a date not less than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (“the transfer date”);



- (b) Advise the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company;
  - (c) Require the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder. The notice must advise shareholders that payment can be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.
- 26.6 Where the price to be paid for each voting share is to be determined under Article 26.3(b):
- (a) If any minority shareholder considers that the arbitrator is not suitably qualified to value the shares, or is not independent, the minority shareholder may give notice to the company within 10 working days requiring the company to apply to the Court for appointment of another person as arbitrator. If such a notice is received, the company must immediately apply to the Court for the appointment of an arbitrator;
  - (b) If a notice is given under paragraph (a), or if for any other reason the arbitration does not proceed on the date and at the place specified in the notice given under Article 26.1, not less than 40 working days notice of the altered date and place must be given to each minority shareholder;
  - (c) Each minority shareholder is entitled to attend the arbitration and to be heard, in person or by a representative (who may, but need not, be a lawyer or a public accountant);
  - (d) The arbitrator must expeditiously determine a fair and reasonable price per share for the shares to be acquired. The price must not include any discount or premium to reflect the size of the parcels of shares to be acquired, or the circumstances of the acquisition;

- (e) The costs of the arbitration must be paid by the majority shareholder;
  - (f) Within 10 working days of the determination by the arbitrator, the company must give a notice to each minority shareholder which -
    - (i) advises the shareholder of the price that has been determined by the arbitrator;
    - (ii) specifies a date not less than 10 working days and not more than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (“the transfer date”);
    - (iii) advises the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company;
    - (iv) requires the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder. The notice must advise shareholders that payment can be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.
- 26.7 On the transfer date:
- (a) The majority shareholder must pay the full amount of the price for all voting shares held by minority shareholders to the company, to be held on trust by the company for the benefit of those shareholders. The payment must be made in cleared funds;
  - (b) All voting shares held by minority shareholders are deemed to be transferred to the majority shareholder upon payment to the company in accordance with paragraph (a), and the company must register the majority shareholder as the

holder of those shares notwithstanding any outstanding share certificates in respect of those shares.

- 26.8 Subject to Article 26.9, within 3 working days of the transfer date the company must pay each minority shareholder the price for that shareholder's voting shares, in the manner specified by that shareholder. Where the shareholder has specified that a cheque will be collected from the company by that shareholder, the cheque must be held ready for collection from that date. If the company fails to make a payment, or to make it available for collection, in accordance with this Article the company must pay interest to the shareholder from the due date to the date on which the payment is made, or is made available for collection, at the rate of 15% per annum accruing daily and compounding monthly.
- 26.9 Where a share certificate has been issued in respect of voting shares held by a minority shareholder, no payment may be made to that minority shareholder under this Article until the minority shareholder delivers to the company:
- (a) The share certificate; or
  - (b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

## **27 Right of exit on transfer of control**

- 27.1 Subject to Article 27.2, this Article applies to a shareholder ("an acquirer") who:
- (a) Acquires shares in the company or otherwise becomes interested in shares in the company ("the acquisition");
  - (b) Before the acquisition, was interested in less than 40% of the voting shares of the company;
  - (c) Following the acquisition, is interested in 40% or more of the voting shares of the company.
- 27.2 A person may be exempted from the application of this Article, either with or without conditions, by a special resolution of holders of voting shares other than:

- (a) Voting shares in which that person is interested; and
  - (b) Voting shares in which any other person is interested, where that other person is interested in not less than 40% of the company's voting shares.
- 27.3 An acquirer must, within 10 working days of first becoming a shareholder to whom this Article applies, give notice to the company:
- (a) Advising the company that the acquirer is a shareholder to whom this Article applies;
  - (b) Identifying the names of the holders of all voting shares in which the acquirer is interested, and the number of shares held by each of them in which the acquirer is interested;
  - (c) Offering to purchase all voting shares in which the acquirer is not interested ("the remaining shares") on the terms set out in this Article.
- 27.4 A notice given under Article 27.3 must be signed by the acquirer or, if the acquirer is a corporation, by a director of that corporation, and must specify:
- (a) The highest price paid for any voting share in the company by the acquirer, or by any person holding shares in which the acquirer is interested, from the date six months prior to the date on which the acquirer first became a person to whom this Article applies up to the date of the notice. If any shares in which the acquirer is interested were acquired during this period for a non-cash consideration, that consideration must be described in the notice, and the notice must state an assessment of the cash value to which that consideration corresponds;
  - (b) The consideration offered by the acquirer for each remaining share, which may but need not be a cash consideration ("the consideration");
  - (c) The date on which the acquirer will provide the consideration for any remaining shares in respect of which the offer is accepted, which must be not

- less than 20 working days nor more than 40 working days from the date on which the notice is given to the company (“the transfer date”);
- (d) The rights of the holders of remaining shares under Article 27.8.
- 27.5 A notice given under Article 27.3 must be accompanied by a report from an independent appropriately qualified person previously approved by the company, confirming that the consideration offered is a fair and reasonable consideration for a share, without any discount or premium to reflect the size of the parcels of shares to be acquired or the circumstances of the acquisition.
- 27.6 Within 10 working days of receiving a notice under Article 27.3, the company must forward the notice to all holders of remaining shares. The notice may, but need not, be accompanied by:
- (a) Additional information provided by the directors in relation to the offer;
- (b) A recommendation by the directors as to whether or not the offer should be accepted.
- 27.7 The company must also forthwith give public notice of the notice given to shareholders.
- 27.8 A shareholder to whom a notice is given under Article 27.6:
- (a) Is not required to accept the offer;
- (b) May accept the offer by notice in writing to the company within 20 working days of the date on which the notice was given to the shareholder.
- 27.9 Where a shareholder gives notice accepting an offer in accordance with Article 27.8(b), there is deemed to be a contract between the acquirer and the shareholder for the purchase by the acquirer of the remaining shares held by that shareholder:
- (a) On the transfer date;
- (b) For the consideration.
- 27.10 If a shareholder to whom this Article applies fails to give the notice required under Article 27.3 within the

time specified in that Article, no voting rights may be exercised in respect of any shares in which that acquirer is interested until that notice has been given.

- 27.11 Where a person who is not a shareholder becomes interested in 40% or more of the voting shares of the company, no voting rights may be exercised in respect of any voting shares in which that person is interested unless that person:
- (a) Is exempted from Article 27 by a special resolution under Article 27.2; or
  - (b) Undertakes to the company to make an offer under this Article as if that person were an acquirer, and complies with that undertaking.

## C DIRECTORS

### **28 Appointment and removal of directors**

- 28.1 The minimum number of directors is two, and the maximum number of directors is ten. The shareholders may by ordinary resolution vary the minimum or maximum number of directors of the company.
- 28.2 A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with Article 20.1.
- 28.3 The resolution appointing a director may specify the period for which the director is to hold office. On the expiry of any period specified in this manner, the director ceases to hold office unless reappointed.
- 28.4 A director vacates office if he or she:
- (a) Resigns in accordance with Article 28.5; or
  - (b) Is removed from office in accordance with Article 28.2; or
  - (c) Becomes disqualified from being a director under section 67 of the Act; or
  - (d) Dies; or
  - (e) Ceases to hold office in accordance with Article 28.3; or

- (f) Is absent from 3 consecutive meetings of the directors without leave being granted by a resolution of the directors, and the directors resolve that that director has vacated office.
- 28.5 A director may resign by delivering a signed written notice of resignation to the registered office of the company. Subject to Articles 28.6 and 28.7, the notice is effective when it is received at the registered office, or at any later time specified in the notice.
- 28.6 Where the company has only one director, that director may not resign:
- (a) Until that director has called a meeting of shareholders to receive notice of the resignation; or
  - (b) If the company has only one shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.
- 28.7 A notice of resignation given by the sole director of the company does not take effect, notwithstanding its terms, until the earlier of the appointment of another director of the company or:
- (a) The time and date for which the meeting of shareholders is called under Article 28.6(a); or
  - (b) If the company has only one shareholder, 10 working days after notice of the resignation has been given to that shareholder.
- 28.8 The directors may appoint any person to be a director to fill a casual vacancy until the next annual meeting of the company.
- 28.9 The company must ensure that notice in the prescribed form of:
- (a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or
  - (b) A change in the name or the residential address of a director of the company -

is delivered to the Registrar. In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

## **29 Powers and duties of directors**

- 29.1 Subject to section 46 of the Act, which relates to major transactions, the business and affairs of the company must be managed by, or under the direction or supervision of, the directors. The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.
- 29.2 The directors may delegate any of their powers to a committee of directors, or to a director or employee. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.
- 29.3 The provisions of these Articles relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.
- 29.4 The directors have the duties set out in the Act, and in particular:
- (a) Each director must act in good faith and in a manner that the director believes to be in the interests of the company;
  - (b) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these Articles.

## **30 Standard of care of directors**

- 30.1 A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:



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

### **31 Obligations of directors in connection with insolvency**

31.1 A director of the company who:

- (a) Believes that the company is unable to pay its debts as they fall due; or
- (b) Is aware of matters which would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due,

must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 65 of the Act.

31.2 At a meeting called under section 65 of the Act the directors must consider whether to appoint an administrator or liquidator, or to continue to carry on the business of the company.

### **32 Interested directors**

32.1 A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless:

- (a) The Act expressly authorises the director to exercise the relevant power notwithstanding such an interest; or

- (b) The director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either -

- (i) these Articles expressly authorise the director to exercise the relevant power notwithstanding such an interest, and the interest has been disclosed in accordance with Article 36.4; or

(ii) the matter in question has been approved by shareholders under section 47, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

- 32.2 A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 90.
- 32.3 A transaction entered into by the company as the result of action taken by a director in breach of section 59 or section 60 or section 61 is voidable at the option of the company in accordance with section 91.

### **33 Use and disclosure of company information**

- 33.1 A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- (a) In the interests of the company; or
  - (b) As required by law; or
  - (c) Where there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action-
    - (i) is approved by all shareholders under section 47 of the Act; or
    - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been disclosed in the interests register referred to in Article 36.

### **34 Indemnities and insurance for directors or employees**

- 34.1 Subject to section 71, the company may provide an indemnity or purchase insurance for a director of the company or of a related company:

- (a) With the approval of the directors. No director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
  - (b) With the approval of shareholders by ordinary resolution. No director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
  - (c) With the approval of all shareholders under section 47.
- 34.2 In Article 34.1:  
“Director” includes:
- (a) A person who is liable under any of sections 59 to 65 by virtue of section 71;
  - (b) A former director:
- “Indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and  
“indemnity” has a corresponding meaning.

### **35 Remuneration of directors**

- 35.1 Directors may receive remuneration and other benefits from the company:
- (a) With the approval of the directors. No director may vote on a resolution concerning remuneration or other benefits to be provided for him or her; or
  - (b) With the approval of shareholders by ordinary resolution. No director may vote on a resolution concerning remuneration or benefits to be received by him or her; or
  - (c) With the approval of all shareholders under section 47.

### **36 Disclosure of interests by directors**

- 36.1 The company must maintain an interests register, and must permit any director or shareholder to inspect the interests register as if section 99 and section 100 of the Act applied to the interests register.

- 36.2 The annual report of the company under section 52 in respect of any accounting period must contain all entries made in the interests register in the course of that accounting period.
- 36.3 The directors must enter in the interests register:
- (a) Particulars of any contract of employment to which Article 33.1(c) applies;
  - (b) Particulars of any indemnity or insurance provided for a director under Article 34;
  - (c) Particulars of any remuneration or other benefits provided to directors under Article 35;
  - (d) Particulars of any disclosure by a director under Articles 36.4 or 36.5.
- 36.4 A director who is in any way directly or indirectly materially interested in a transaction or proposed transaction with the company must within 10 working days of becoming aware of that interest:
- (a) Disclose that interest in writing to the directors; and
  - (b) Ensure that particulars of that disclosure are entered in the interests register.
- 36.5 A director may disclose to the other directors, and enter in the interests register, a general disclosure that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of Article 36.4.

### **37 Procedure at meetings of directors**

- 37.1 Articles 38 to 44 set out the procedure to be followed at meetings of directors.
- 37.2 A meeting of directors may determine its own procedure, to the extent that it is not governed by these Articles.

**38 Chairperson**

- 38.1 The directors may elect one of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.
- 38.2 If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

**39 Notice of meeting**

- 39.1 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this Article.
- 39.2 Not less than 24 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.
- 39.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

**40 Methods of holding meetings**

- 40.1 A meeting of directors may be held either:
- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

**41 Quorum**

- 41.1 A quorum for a meeting of directors is a majority of the directors.

- 41.2 No business may be transacted at a meeting of directors if a quorum is not present.

#### **42 Voting**

- 42.1 Every director has one vote.
- 42.2 The chairperson has a casting vote.
- 42.3 A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.
- 42.4 A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

#### **43 Minutes**

- 43.1 The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

#### **44 Unanimous resolution**

- 44.1 A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- 44.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- 44.3 A copy of any such resolution must be entered in the minute book of the directors' proceedings.

#### **45 Managing director and other executive directors**

- 45.1 The directors may from time to time appoint a director as managing director for such period and on such terms as they think fit.
- 45.2 Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

- 45.3 A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.
- 45.4 The managing director may be paid such remuneration as he or she may agree with the directors. The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.
- 45.5 The directors may delegate to the managing director, subject to any conditions or restrictions which they consider appropriate, any of their powers which can be lawfully delegated. Any such delegation may at any time be withdrawn or varied by the directors. The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.
- 45.6 A director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors. The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

## D COMPANY RECORDS

### **46 Company records**

- 46.1 The company must keep the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 98:
- (a) The Articles of the company;
  - (b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
  - (c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

- (d) The full names and residential and postal addresses of the current directors;
  - (e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 52;
  - (f) Copies of all financial statements required to be completed under section 111 for the last 7 completed accounting periods of the company;
  - (g) The accounting records required by section 111 for the current accounting period and for the last 7 completed accounting periods of the company;
  - (h) The share register.
- 46.2 The references in paragraphs (b), (c), and (e), of Article 46.1 to 7 years and the references in paragraphs (f) and (g) of that Article to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 96(2).
- 46.3 The interests register required to be kept under Article 36:
- (a) Must be kept at the same place as the written communications to shareholders referred to in Article 46.1(e);
  - (b) Must be kept in a form that complies with Article 47;
  - (c) Must be made available to shareholders in the same manner as records to which Article 48.2 applies.

#### **47 Form of records**

- 47.1 The records of the company must be kept:
- (a) In written form; or
  - (b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- 47.2 The directors must ensure that adequate measures exist to:
- (a) Prevent the records being falsified; and



- (b) Detect any falsification of them.

**48 Access to records**

- 48.1 The directors of the company are entitled to access to the company's records in accordance with section 99 of the Act.
- 48.2 A shareholder of the company is entitled:
  - (a) To inspect the documents referred to in section 100 of the Act, in the manner specified in section 102 of the Act; and
  - (b) To require copies of or extracts from any document which he or she may inspect within five working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company. The fee may be determined by any director, subject to any directions from the directors.

**49 Documents to be sent to the Registrar**

- 49.1 In addition to the annual return required under section 103 of the Act, the company must send the following documents to the Registrar under the Act:
  - (a) Notice of the adoption of new Articles by the company, or the alteration of the Articles of the company, under section 14;
  - (b) Notice of the issue of shares by the company, under section 20;
  - (c) Notice of the acquisition by the company of its own shares, under section 25;
  - (d) Notice of the redemption of a share, under section 29;
  - (e) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 70;
  - (f) Notice of the making of an order under section 82 altering or adding to the Articles of a company;

- (g) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 98;
- (h) Notice of a change in the registered office of the company, under section 108;
- (i) Documents requested by the Registrar under section 187.

**50 Documents to be sent to shareholders**

- 50.1 In addition to the annual report required under section 52 of the Act, the company must send the following documents to shareholders under the Act:
- (a) Notice of any repurchase of shares to which section 25(4) applies;
  - (b) Notice of a written resolution approved under section 49;
  - (c) Financial statements required to be sent under section 111;
  - (d) Any written statement by an auditor under section 114(1)(a);
  - (e) The report by the auditor under section 116.

**E ACCOUNTS AND AUDIT**

**51 Accounting records to be kept**

- 51.1 The directors of the company must cause accounting records to be kept that:
- (a) Correctly record and explain the transactions of the company; and
  - (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
  - (c) Will enable the directors to ensure that the financial statements of the company comply with section 111 of the Act; and
  - (d) Will enable the financial statements of the company to be readily and properly audited.

- 51.2 Without limiting Article 51.1, the accounting records must contain:
- (a) Entries of money received and spent each day and the matters to which it relates;
  - (b) A record of the assets and liabilities of the company;
  - (c) If the company's business involves dealing in goods-
    - (i) a record of goods bought and sold, and relevant invoices;
    - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year;
  - (d) If the company's business involves providing services, a record of services provided and relevant invoices.
- 51.3 If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business,:
- (a) Invoices need not be kept in respect of each retail transaction for the purposes of Article 51.2; and
  - (b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with Article 51.2 in respect of those transactions.
- 51.4 The accounting records must be kept:
- (a) In a form permitted under Article 47; and
  - (b) At the registered office of the company, or any other place permitted under section 98.

## **52 Financial statements to be prepared**

- 52.1 The directors must ensure that:
- (a) Within 4 months after the balance date of the company, financial statements that comply with Article 52.2 are completed in relation to the company and that balance date; and
  - (b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be

satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 52.

- 52.2 The financial statements of the company:
- (a) Must give a true and fair view of the matters to which they relate; and
  - (b) Must comply with any applicable regulations in relation to the form or content of financial statements made under the Act; and
  - (c) Must be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- 52.3 The period between:
- (a) The date of incorporation of the company and its first balance date; or
  - (b) Any two balance dates of the company, must not exceed 15 months.
- 52.4 In these Articles, the term “financial statements”, in relation to the company and a balance date, means:
- (a) A statement of financial position for the entity as at the balance date; and
  - (b) In the case of -
    - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
    - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
  - (c) If required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
  - (d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act -

together with any notes or documents giving information relating to the statement of financial position and other statements.

### **53 Appointment of auditor**

- 53.1 The company must appoint an auditor who is qualified to hold that office under section 113 of the Act to:
- (a) Audit the financial statements of the company in respect of an accounting period; and
  - (b) Hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under Article 53.3.
- 53.2 The company must appoint an auditor within 30 working days in the event of a vacancy in the office of auditor.
- 53.3 An auditor ceases to hold office if he or she:
- (a) Resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
  - (b) Is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 114(2) of the Act; or
  - (c) Becomes disqualified from being the auditor of the company under section 113; or
  - (d) Is adjudged to be mentally defective under the Mental Health Ordinance 1961; or
  - (e) Dies.
- 53.4 An auditor may be appointed:
- (a) By ordinary resolution; or
  - (b) If the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must within 10 working days give notice of the appointment to all shareholders.
- 53.5 The fees payable to the auditor must be agreed between the auditor and the directors.

**54 Auditor's attendance at shareholders' meeting**

- 54.1 The directors must ensure that an auditor of the company:
- (a) Is permitted to attend a meeting of shareholders of the company; and
  - (b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings or resolutions of shareholders; and
  - (c) May be heard at a meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

**F LIQUIDATION AND REMOVAL FROM THE REGISTER****55 Resolution to appoint liquidator**

- 55.1 The shareholders may resolve to liquidate the company by special resolution.
- 55.2 The directors may resolve to liquidate the company at a meeting called under section 65 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

**56 Distribution of surplus assets**

- 56.1 The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.
- 56.2 The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose the liquidator may set such value as he or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

## G MISCELLANEOUS

**57 Service of documents on shareholders**

- 57.1 A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:
- (a) Delivered to that person; or
  - (b) Posted to that person's postal address; or
  - (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.
- 57.2 A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 207 or section 209 of the Act, as the case may be.

**58 Interpretation**

- 58.1 In these Articles, "the Act" means the Companies Act 2001.
- 58.2 Terms which are defined in the Act have the same meaning in these Articles.
- 58.3 For the purposes of these Articles:
- (a) "Voting share" means a share which confers on its holder the right to vote on a resolution to amend the Articles;
  - (b) The percentage of voting shares held by any person is treated as equal to the percentage of votes that that person is entitled to cast on such a resolution.
- 58.4 For the purposes of these Articles, a person is interested in a voting share if that person:
- (a) Is a beneficial owner of the share; or
  - (b) Has the power to exercise any right to vote attached to the share; or
  - (c) Has the power to control the exercise of any right to vote attached to the share; or
  - (d) Has the power to acquire or dispose of the share; or

- (e) Has the power to control the acquisition or disposition of the share by another person; or
  - (f) Under, or by virtue of, any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it, and whether or not it is legally enforceable) -
    - (i) may at any time have the power to exercise any right to vote attached to the share; or
    - (ii) may at any time have the power to control the exercise of any right to vote attached to the share; or
    - (iii) may at any time have the power to acquire or dispose of, the share; or
    - (iv) may at any time have the power to control the acquisition or disposition of the share by another person.
- 58.5 A person who has, or may have, a power referred to in any of paragraphs (b) to (f) of Article 58.4, is interested in a share regardless of whether the power:
- (a) Is expressed or implied;
  - (b) Is direct or indirect;
  - (c) Is legally enforceable or not;
  - (d) Is related to a particular share or not;
  - (e) Is subject to restraint or restriction or is capable of being made subject to restraint or restriction;
  - (f) Is exercisable presently or in the future;
  - (g) Is exercisable only on the fulfilment of a condition;
  - (h) Is exercisable alone or jointly with another person or persons.

#### **FOURTH SCHEDULE MINORITY BUY-OUT PROCEDURE**

**1. Notice requiring purchase-(1)** A shareholder of a company who is entitled to require the company to purchase shares by virtue of section 51 may:



- (a) Within 10 working days of the passing of the resolution at a meeting of shareholders; or
  - (b) Where the resolution was passed under section 49, within 10 working days of the date on which notice of the passing of the resolution is given to the shareholder -  
give a written notice to the company requiring the company to purchase those shares.
- (2) Within 20 working days of receiving a notice under subclause (1), the directors must:
- (a) Agree to the purchase of the shares by the company;  
or
  - (b) Arrange for some other person to agree to purchase the shares; or
  - (c) Arrange, before taking the action concerned, for the resolution to be rescinded or decide in the appropriate manner not to take the action concerned, as the case may be; and
  - (d) Give written notice to the shareholder of the directors' decision under this subsection.

**2. Purchase by company-**(1) Where the directors agree under clause 1(2)(a) to the purchase of the shares by the company, the directors must, on giving notice under that clause or within 5 working days thereafter:

- (a) Nominate a date on which the shares will be acquired by the company ("the purchase date"), which must not be less than 10 working days or more than 20 working days from the date of giving notice to the shareholder;
  - (b) Nominate a fair and reasonable price for the shares to be acquired; and
  - (c) Give notice of the price to the holder of those shares.
- (2) A shareholder who considers that the price nominated by the directors is not fair or reasonable must within 10 working days give notice of objection to the company.
- (3) On the purchase date:

- (a) The shares are deemed to be transferred to the company; and
  - (b) The company is liable to pay for the shares in accordance with this clause, subject to section 22.
- (4) If, within 10 working days of giving notice to a shareholder under subclause (1), no objection to the price has been received by the company, the price to be paid for the shares is the nominated price.
- (5) If, within 10 working days of giving notice to a shareholder under subclause (1), an objection to the price has been received by the company, the company must:
- (a) Refer the question of what is a fair and reasonable price to determination by an expert in accordance with clause (3); and
  - (b) On the purchase date, pay a provisional price in respect of each share equal to the price nominated by the directors.

**3. Expert determination of price-**(1) Where the company is required to refer the price for shares to expert determination in accordance with clause 2(5)(b), the company must within 10 working days nominate an independent person with appropriate expertise as the expert to determine the price, and give notice of that appointment to the shareholder.

(2) The shareholder may within 10 working days of receiving the notice referred to in subsection (1) give notice to the company that he or she objects to the expert nominated by the company, on the grounds that that person:

- (a) Is not independent; or
- (b) Does not have the appropriate expertise.

(3) If, within 10 working days of receipt of notice by a shareholder under subclause (1), no objection to the expert has been received by the company, the expert must expeditiously determine a fair and reasonable price for the shares to be purchased.

(4) If, within 10 working days of receipt of notice by a shareholder under subclause (1), an objection to the expert has been received by the company, the company must forthwith apply to the court for the appointment of an expert. The Court may appoint the person nominated by the company, or any person nominated by the shareholder, or such other independent person with appropriate expertise as the Court may think fit. The expert appointed by the Court must forthwith upon being appointed proceed to expeditiously determine a fair and reasonable price for the shares to be purchased.

(5) If the price determined by the expert:

- (a) Exceeds the provisional price, the company must, subject to section 22, forthwith pay the balance owing to the shareholder;
- (b) Is less than the provisional price paid, the company may recover the excess paid from the shareholder.

(6) The expert may award interest on any balance payable or excess to be repaid under subclause (5) at such rate as he or she thinks fit.

(7) The determination by the expert:

- (a) Is final; and
- (b) Is made by the expert as an expert, and not as an arbitrator.

**4 Purchase of shares by third party-**(1) Clauses 2 and 3 apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with clause 1(2)(b) subject to such modifications as may be necessary, and, in particular, as if references in that section to the directors and the company were references to that person.

(2) Every holder of shares that are to be purchased in accordance with the arrangement is indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

**5. Inability of company to pay purchase price** - Section 27 applies to the purchase of shares under this Schedule as if there were a contract between the shareholder and the company for the purchase of shares in accordance with the provisions of this Schedule.

**6. Fair and reasonable price** - For the purposes of this schedule, a price for a share is a fair and reasonable price if it is a fair and reasonable price for a share in the company as at the purchase date, disregarding:

- (a) Any premium or discount in respect of the size of parcels of shares to be acquired;
- (b) The fact that the shares are being acquired under section 51;
- (c) The effect or likely effect on the value of the company and its shares of the company approving the resolution the approval of which entitled the shareholder to require the company to purchase his or her shares.

## **FIFTH SCHEDULE**

### **AMALGAMATIONS**

**1. Approval of amalgamation proposal**-(1) Subject to subclause (2), an amalgamation proposal must be approved in accordance with clause 3 of this schedule and the Articles of each amalgamating company.

(2) An amalgamation proposal that relates to the amalgamation:

- (a) Of a company with one or more other companies that is or that are directly or indirectly wholly owned by it; or
  - (b) Of two or more companies each of which is directly or indirectly wholly owned by the same person,
- may be approved in accordance with clause 4 of this schedule.

**2. Contents of amalgamation proposal-**(1) An amalgamation proposal must set out the terms of the amalgamation, and in particular:

- (a) The name of the amalgamated company, which may be the name of one of the amalgamating companies, or a new name which complies with section 10;
  - (b) Whether the company is a private company or a public company;
  - (c) The full name and residential address and postal address of every director of the proposed company;
  - (d) The registered office of the proposed company;
  - (e) The postal address of the company, which may be either the postal address of the registered office or any other postal address;
  - (f) The manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;
  - (g) If shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;
  - (h) Any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g);
  - (i) Details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.
- (2) The amalgamation proposal must:
- (a) Specify whether the Articles of the amalgamated company will be the model Articles in the First or Second or Third Schedule; or
  - (b) Include a copy of the Articles of the amalgamated company, if they differ from the model Articles.
- (3) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

(4) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal:

- (a) Must provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective;
- (b) Must not provide for the conversion of those shares into shares of the amalgamated company.

**3. Approval of amalgamation proposal-**(1) The directors of each amalgamating company must send to each shareholder of the company, not less than 20 working days before the amalgamation is proposed to take effect:

- (a) A copy of the amalgamation proposal;
  - (b) A statement setting out the rights of shareholders under section 125;
  - (c) A statement of any material interests of the directors in the proposal, whether in that capacity or otherwise;
  - (d) Such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.
- (2) The amalgamation proposal must be approved:
- (a) By the shareholders of each amalgamating company by special resolution, as if the proposal were a proposal to alter the Articles of the company; and
  - (b) If a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's Articles or otherwise proposed in relation to that company, require the approval of an interest group, by -
    - (i) a special resolution of each interest group; or
    - (ii) all shareholders under section 47.

**4. Short form amalgamation-(1)** An amalgamation proposal in relation to a company (the parent company) and one or more other companies that is or that are directly or indirectly wholly owned by it may be approved by a resolution of the directors of each amalgamating company, if the amalgamation proposal provides that:

- (a) The shares of each amalgamating company, other than the parent company, will be cancelled without payment or other consideration; and
- (b) The Articles of the amalgamated company will be the same as the Articles of the parent company.

(2) An amalgamation proposal in relation to two or more companies, each of which is directly or indirectly wholly owned by the same person, may be approved by a resolution of the directors of each amalgamating company, if the amalgamation proposal provides that:

- (a) The shares of all but one of the amalgamating companies will be cancelled without payment or other consideration; and
- (b) The Articles of the amalgamated company will be the same as the Articles of the amalgamating company whose shares are not cancelled.

#### **SIXTH SCHEDULE MEETINGS OF CREDITORS TO CONSIDER A COMPROMISE**

**1. Methods of holding meetings** - A meeting of creditors may be held:

- (a) By assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting; or
- (b) By means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting; or
- (c) By conducting a postal ballot in accordance with clause 7 of this Schedule of those creditors entitled to take part.

**2. Notice of meeting-**(1) Written notice of:

- (a) The time and place of every meeting to be held under clause 1(a) of this Schedule; or
- (b) The time and method of communication for every meeting to be held under clause 1(b) of this Schedule; or
- (c) The time and address for the return of voting papers for every meeting to be held under clause 1(a) or (b) or (c) of this Schedule -

must be sent to every creditor entitled to attend the meeting, and to any liquidator not less than 5 working days before the meeting.

## (2) The notice must:

- (a) State the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and
- (b) Set out the text of any resolution to be submitted to the meeting; and
- (c) Include a voting paper in respect of each such resolution and voting and mailing instructions; and
- (d) State that if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting -
  - (i) the creditor's postal vote is invalid in respect of that different resolution; but
  - (ii) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.

(3) An irregularity in or a failure to receive a notice of meeting of creditors does not invalidate anything done by a meeting of creditors if:

- (a) The irregularity or failure is not material; or
- (b) All the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or



- (c) All such creditors agree to waive the irregularity or failure.
- (4) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.
- (5) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.
- (6) If a meeting of creditors under clause 1(a) or (b) of this Schedule is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

**3. Chairperson-**(1) If an administrator or liquidator has been appointed and is present, or if an administrator or liquidator has appointed a nominee and the nominee is present, he or she must act as chairperson of a meeting held in accordance with clause 1(a) or (b) of this Schedule.

(2) At any meeting of creditors where there is no administrator or liquidator or neither that person nor any nominee of that person is present, the proponent of the compromise or the proponent's nominee must act as chairperson of the meeting; but if neither the proponent nor any nominee of the proponent is present, the creditors participating must choose 1 of their number to act as chairperson of the meeting.

(3) The person convening a meeting under clause 1(c) of this Schedule must do everything necessary that would otherwise be done by the person chairing a meeting.

**4. Quorum-**(1) A quorum for a meeting of creditors is present if:

- (a) Three creditors who are entitled to vote or their proxies are present or have cast postal votes; or
- (b) If the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote or their proxies are present or have cast postal votes.

(2) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairperson may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

**5. Voting-**(1) At any meeting of creditors or a class of creditors a resolution is adopted if a majority in number representing 75 percent in value of the creditors or class of creditors voting in person, or by proxy vote, or by postal vote, vote in favour of the resolution.

(2) The chairperson of the meeting does not have a casting vote.

**6. Proxies-**(1) A creditor may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a creditor is entitled to attend and participate in a meeting of creditors as if the proxy were the creditor.

(3) A proxy must be appointed by notice in writing signed by the creditor.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the person by whom the notice convening the meeting was given, not less than 2 working days before the start of the meeting.

**7. Postal votes-**(1) A creditor entitled to vote at a meeting of creditors held in accordance with clause 1(a) or (b) or (c) of this Schedule may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.

(2) If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting:

- (a) The creditor's postal vote is invalid in respect of that different resolution; but
  - (b) The creditor may vote, in respect of that different resolution, either by being present in person or by proxy.
- (3) The notice of meeting must state the name of the person authorised to receive and count postal votes in relation to that meeting.
- (4) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being so authorised in the notice of the meeting, every director, or if the company is in liquidation, the liquidator, is deemed to be so authorised.
- (5) A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under clause 1(c) of this Schedule, not later than the date named for the return of the voting paper.
- (6) It is the duty of a person authorised to receive and count postal votes in relation to a meeting:
- (a) To collect together all postal votes received by him or her; and
  - (b) In relation to each resolution to be voted on -
    - (i) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and determine the total amount of the debts owed by the company to those creditors; and
    - (ii) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and
  - (c) To sign a certificate -

- (i) that he or she has carried out the duties set out in paragraphs (a) and (b); and
  - (ii) stating the results of the counts and determinations required by paragraph (b); and
  - (d) To ensure that the certificate required by paragraph (c) is presented to the person chairing or convening the meeting.
- (7) If a vote is taken at a meeting held under clause 1(a) or (b) of this Schedule on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.
- (8) A certificate given under subclause (5) in relation to the postal votes cast in respect of a meeting of creditors must be annexed to the minutes of the meeting.

**8. Minutes-**(1) The person chairing a meeting of creditors, or in the case of a meeting held under clause 1(c) of this Schedule, the person convening the meeting, must ensure that minutes are kept of all proceedings.

(2) Minutes which have been signed correct by the person chairing or convening the meeting are prima facie evidence of the proceedings.

**9. Corporations may act by representatives -** A body corporate which is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

**10. Other proceedings -** Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

**11. Effect of irregularity or defect-**(1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the Court orders otherwise.

(2) The Court may, on the application of the liquidator or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

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