

International Business Companies Act, 2006

Cook Islands

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COOK ISLANDS INTERNATIONAL COMPANIES ACT 1981-82

(Incorporating International Companies Amendment Act 1986-87

International Companies Amendment Act 1987
International Companies Amendment Act 1988
International Companies Amendment Act 1989
International Companies Amendment Act 1990
International Companies Amendment Act 1991
International Companies Amendment Act 1991 No.2)
International Companies Amendment Act 2003
International Companies Amendment Act 2004
International Companies Amendment Act 2005
International Companies Amendment Act 2006

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(Section 57)

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**COOK ISLANDS
INTERNATIONAL COMPANIES ACT 1981-82**

**(incorporating International Companies Amendment Act 1986-87
International Companies Amendment Act 1987
International Companies Amendment Act 1988
International Companies Amendment Act 1989
International Companies Amendment Act 1990
International Companies Amendment Act 1991
International Companies Amendment Act 1991 No. 2)
International Companies Amendment Act 2003
International Companies Amendment Act 2004
International Companies Amendment Act 2005**

An Act to provide for the incorporation and administration of international companies; and for purposes connected therewith.

(13 May 1982)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by authority of the same, as follows:

PART I

PRELIMINARY

1. **Short title** - This Act may be cited as the International Companies Act 1981-82.
2. **Interpretation** - (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires
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"Annual return" means the return required to be made by an international company under section 112 and includes any document accompanying the return;

"Approved newspaper" in relation to any notice required to be published by any provision of this Act means any newspaper approved by the Registrar;

"Articles" means articles of association;

"Audit period" means the period in respect of which any profit and loss account of an international company is made up;

"Bearer" means the owner for the time being of any bearer instrument;

"Bearer debenture" means any debenture of an international company which is either payable to or enforceable by or both payable to and enforceable by any person who for the time is the bearer thereof;

"Bearer instrument" means any bearer share, warrant to bearer or any other membership interest transferable by delivery, and any form of bearer security issued by an international company including bearer debentures, bearer bonds and share warrants to bearer;

"Board" means the board of directors of an international company or a foreign company;

"Books" includes accounts, deeds, writings, invoices, records and documents;

"Branch register" means a branch register of members of an international company kept in pursuance of section 111;

"Capital surplus" means the entire surplus of an international company other than its earned surplus and includes unrealised capital profits of all kinds;

"Certified" means certified in the prescribed manner to be a particular document or to be a true copy thereof;

"Charge" includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

"Commission" means the Financial Supervisory Commission established by the Financial Supervisory Commission Act 2003;"

"Company" means any body corporate formed or incorporated (other than a domestic company) whether in the Cook Islands or outside the Cook Islands and includes any foreign company (other than an overseas company registered under the Companies Act 1970-71);

"Company limited by guarantee" means an international company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute from time to time and in the event of it being wound up and which is stated to be an international company limited by guarantee in its memorandum;

"Company limited by shares" means an international company formed on the principle of having the liability of its members limited to the amount (if any) unpaid on the shares respectively held by them and which is stated to be an international company limited by shares in its memorandum;

"Company limited both by shares and by guarantee" means an international company formed on the principle of having the liability of its members;

- (a) in the case of members who have given a guarantee, limited to the respective amount that they have undertaken to contribute from time to time and in the event of it being wound up; and
- (b) in the case of members who are shareholders, limited to the amount (if any) unpaid on the shares respectively held by them,

and which is stated to be a company limited both by shares and by guarantee in its memorandum;

"Contributory", in relation to an international company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and,

prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

"Court" means High Court;

"Creditor" means a person whose debt or claim is admissible against the company under section 155 and, in respect of the proof of debts or claims, includes a person seeking to prove that his claim is so admissible, but shall exclude any foreign government and any taxation authority of any foreign government;

"Custodian" means any person which is, from time to time, a licensed financial institution;

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

"Debt" means any actual or contingent debt, but shall exclude any taxation, fine or penalty or any liability under any public law imposed by any foreign government and any other debt or obligation incapable of being enforced in the Cook Islands;

"Deputy Registrar" means a Deputy Registrar of International and Foreign Companies appointed under section 8(1);

"Director" means any person occupying the position of director of an international company and any person held out by a company to be a director;

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

"Dollar" means a dollar unit of the currency of New Zealand;

"Domestic company" means a company incorporated under the Companies Act 1970-71;

"Earned surplus" means that portion of the surplus of an international company equal to the balance of its net profits, income, gains and losses from the date of incorporation or from the latest date when a deficit was eliminated, after deducting subsequent distributions to shareholders and transfers made out of earned surplus account and shall include also any portion of surplus allocated to earned surplus account in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or property or assets of another company, whether incorporated in the Cook Islands or not;

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

"Licensed financial institution" has the meaning given in section 2 of the Financial Supervisory Commission Act 2003;

"Foreign company" means -

- (a) a corporation, company, society, association or other body incorporated outside the Cook Islands; or
- (b) an incorporated society, association or other body which under the law of its place of origin may sue or be sued or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business

in the Cook Islands;

"Foreign Government" means any government, governmental authority or agency or any quasi-governmental authority or agency (other than the government of the Cook Islands or any governmental authority or agency or any quasi-governmental authority or agency of the Cook Islands);

"Holder" in relation to any bearer instrument means the bearer thereof for the time being;

"Insolvent" means unable to pay debts as they become due;

"Issued share capital" in relation to par value shares means, at any particular time, the sum of the par value of all shares of an international company that have been issued;

"International company" means a company incorporated pursuant to this Act and includes a company registered on incorporation as an international shipping company pursuant to section 14A;

"Lodged" means lodged in accordance with the provisions of this Act;

"Meeting" shall have the extended meaning ascribed to it in section 96(4) of this Act;

"Membership interest" means:

- (a) in the case of a company limited by guarantee, the guarantors membership interest;
- (b) in the case of a company limited by shares, a no liability company or an unlimited company, the shareholders membership interest;
- (c) in the case of a company limited by shares and by guarantee
 - (i) the guarantors membership interest; and
 - (ii) the shareholders membership interest as the case may be;
- (d) in the case of a mutual company the rights of any policy holder as member, or any other such interest envisaged by section 18E(1)(b) of this Act;

"Memorandum" in relation to an international company, means the memorandum of association of that company for the time being in force; and in relation to a foreign company, means the charter, statute, memorandum of association or other instrument constituting or defining the constitution of the company;

"Month" means calendar month;

"Minister" means the Minister of Finance;

"Mutual company" shall have the meaning attributed to it in subsection (1) of section 18E of this Act;

"No liability company" means an international company formed on the principle of having no liability placed on its members and which is stated to be a no liability company in its memorandum;

"Officer", in relation to a company, includes -

- (a) any director, secretary or employee of the company;
- (c) a receiver and manager of any part of the undertaking of the company appointed under the power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding-up, but does not include a liquidator appointed in a compulsory winding-up;

"Official liquidator" means a person appointed to be such under the provisions of section 11;

"Ordinary debenture" means any debenture of an international company which is not a bearer debenture;

"Person" includes a natural person, a corporation sole, a company, a partnership, a statutory body or office, an instrumentality of government, any other public authority, any court or tribunal and any other body of persons whether corporate or unincorporated;

"Post" includes communication by mail, courier, freight, telex or facsimile;

"Printing" includes typewriting and any duplication thereof not less legible and permanent than the original;

"Prescribed" means prescribed by/or under this Act;

"Profit and loss account" includes income and expenditure account, revenue account or any other account showing the results of the business of a company for a period;

"Promoter", in relation to a prospectus issued by or in connection with an international company means a promoter of the company who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional or advisory capacity;

"Prospectus" means any prospectus, notice, circular, advertisement or other invitation offering any shares of an international company to the public;

"Public" includes those persons or classes of persons in the Cook Islands or elsewhere who are for the relevant purposes regarded in the Cook Islands by the law of the Cook Islands or elsewhere by the law of the place where they are as being "public" or "the public";

"Registered company auditor" means a person registered as such under section 10 and, in relation to a foreign company, includes a person qualified to act as the auditor of the company under the laws of the place in which the company is incorporated;

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

"Registrar" means the Registrar of International and Foreign Companies appointed under Section 8(1);

"Registrar of Vessels" means the person responsible for the registration of vessels pursuant to Part III of the Shipping Act 1998;

"Regulations" means Regulations made under this Act;

"Resident director" means an officer of a trustee company appointed to be such under section 83;

"Resident secretary" means a trustee company, any wholly owned subsidiary thereof or any officer of a trustee company appointed to be such under section 90;

"Secured debenture" means:

- (i) any debenture which is stated on its face to be a secured debenture; or
- (ii) any debenture which is issued on terms affording the holder of that debenture rights and powers to vote and to demand a poll in respect of the business and undertaking of the company (whether in addition to the rights of members of the company or in substitution for those rights);

"Share" in relation to an international company means a share in the share capital of that company and includes stock;

"Surplus" means the excess of the net assets of an international company over its issued capital;

"Table A" means Table A in Schedule 2;

"Table B" means Table B in Schedule 2;

"Table B Debenture" means:

- (a) a debenture stated on its face to be a secured debenture issued in accordance with this Act prior to 15 October 1990 provided that a debenture secured by mortgage or charge and not issued upon terms that the provisions of Table B shall apply (with or without amendments or modifications) shall not be a Table B Debenture for the purposes of this Act; and
- (b) a debenture expressed on its face to be a Table B Debenture or expressed to be issued upon terms that the provisions of Table B shall apply with such modifications or amendments as are set out in the terms of issue of any such debenture;

"The Queen's Representative" means the Queen's Representative of the Cook Islands appointed under the Cook Islands Constitution;

"Supervisory authority" has the same meaning given in section 2 of the Financial Transactions Reporting Act 2003;

"Trustee company" means a company incorporated for the purpose of undertaking or offering to undertake, as a whole or a part of its business, all or any of the duties of a trustee and which is registered under the Trustee Companies Act 1981-82;

"Unlimited company" means a company formed on the principle of having no limit placed on the liability of its members and which is stated to be an unlimited company in its memorandum;

"Year" means calendar year.

[Amended Act 1986/26; Act 1989/22; Act 1990/4; Act 1991/31; Act 2003/5; Act 2005/8; Act 2006/3]

(2) For the purposes of this Act, a person including a company shall be deemed to hold a beneficial interest in a share-

- (a) if that person, either alone or together with other persons, is entitled (otherwise than as a trustee for, on behalf of or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share; or
- (b) if that person, being a company, holds any beneficial interest in a share of another company which holds, or a subsidiary of which holds, any beneficial interest in that first mentioned share.

(3) For the purposes of this Act words importing the masculine gender shall include females and words in the singular shall include the plural and words in the plural shall include the singular.

(4) Whenever in this Act any person holding or occupying a particular office or position is mentioned or referred to, such mention or reference shall, unless the contrary intention appears, be taken to include all persons who shall at any time thereafter occupy for the time being the said office or position.

(5) Where the provisions of this Act are inconsistent with the provisions of any Act, other than the Constitution of the Cook Islands, the provisions of this Act shall prevail.

3. **Citation of references** - Where a provision of this Act refers -

- (a) to a Part or Section by a number but does not identify it as being part of any particular Act, the reference shall be read and construed as a reference to the Part or Section designated by that number, of or to this Act; or
- (b) to a Division, subdivision, paragraph or subparagraph, clause or subclause by a number but does not identify it as being part of any particular Act, the reference shall be read and construed as a reference –
 - (i) to the Division, designated by that number, of the Part in which the reference occurs;
 - (ii) to the subsection, designated by that number, of the section in which the reference occurs;
 - (iii) to the paragraph, designated by that number, of the section, subsection, Schedule or definition, or of the clause or subclause of or in the Schedule, in which the reference occurs;
 - (iv) to the subparagraph, designated by that number, of the paragraph in which the reference occurs; or
 - (v) to the clause or subclause, designated by that number, of the Schedule in which the reference occurs,as the case may require.

4. **Related companies** - (1) For the purposes of this Act a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another company, if -

- (a) that other company -
 - (i) controls the composition of the board of directors of the first-mentioned company;
 - (ii) controls more than half of the voting power of the first-mentioned company; or

- (iii) holds more than half of the issued shares or share capital of the first-mentioned company (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

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

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

- (a) a person cannot be appointed as a director without the exercise in his favour by that other company of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other company.

(3) In determining whether one company is a subsidiary of another company -

- (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d) any shares held or power exercisable -
 - (i) by any person as a nominee for that other company, except where that other company is concerned only in a fiduciary capacity; or
 - (ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other company;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary, not being held or exercisable as mentioned in paragraph (c) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

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

(5) Where a company -

- (a) is the parent company of another company;

- (b) is a subsidiary of another company; or
- (c) is a subsidiary of the parent company of another company,

that first mentioned company and that other company shall for the purposes of this Act be deemed to be related to each other and to be related to every other company so related to either of them or related directly, or by a series of such relationships, to any other such related company.

5. **Application of Act** - Unless the context otherwise requires no provision of this Act shall apply to a domestic company.

6. **Restriction on Shareholding in International Company** - No natural person who is a citizen or resident of or domiciled in the Cook Islands and no company incorporated or registered under the Companies Act 1970-71, except a trustee company, may hold shares beneficially, either individually or with another person or persons, in an international company under this Act or a foreign company that has the centre of its administrative management in the Cook Islands unless that foreign company is registered under the Companies Act 1970-71.

[Amended Act 1991/31]

7. **Permitted purposes for incorporation** - (1) An international company may be incorporated for any lawful purpose or purposes except for the purpose of carrying on the business of banking, insurance or acting as a trustee company, or any of such businesses, otherwise than in accordance with this section.

(2) An international company unless restricted by its articles or memorandum, may carry on any business which may lawfully be carried on by an individual but shall not carry on the business of -

- (a) banking, unless it is licensed pursuant to the provisions of the Off-Shore Banking Act 1981;
- (b) insurance, unless it is licensed pursuant to the provisions of the Off-Shore Insurance Act 1981-82; or
- (c) acting as a trustee company unless it is permitted to do so pursuant to the Trustee Companies Act 1981-82.

(3) For the purposes of this section an international company shall not be regarded as carrying on the business of acting as a trustee company when acting as the trustee or one of the trustees of not more than three trusts.

[Amended Act 1991/31]

PART II

ADMINISTRATION OF ACT

8. **Registrar of Companies** - (1) There shall be appointed, pursuant to the provisions of the Financial Supervisory Commission Act 2003 -

- (a) a Registrar of International and Foreign Companies to have the charge and control of the International Companies Office and to carry out the duties and functions vested in him by or under this or any other Act;

- (b) such Deputy Registrars of International and Foreign Companies and other officers as are required for the purposes of this Act.

(2) Anything by this act appointed or authorised or required to be done by the Registrar may be done by any such Deputy Registrar and shall be as valid and effectual as if done by the Registrar.

(3) All Courts, judges, and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar and of any Deputy Registrar.

(4) For the purpose of ascertaining whether a company is complying with the provisions of this Act the Registrar or any person authorised by him may inspect any book, minute book, register or record required by or under this Act to be kept by the company.

(5) Any person appointed under the terms of subsection (1) who except for the purposes of this Act or except in the course of criminal proceedings makes a record of, divulges or communicates to any other person any information which he possesses or has acquired:

- (a) by reason of his carrying out the duties and functions of his office; or
- (b) by reason of access afforded or obtained by him to any document or register kept by the Registrar or book minute book register or record kept by any company;

shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding two years in respect of each such offence.

(6) A company or any officer thereof shall, on being required by the Registrar or a person authorised by the Registrar, produce any such book, register or record.

[Amended Act 1989/22]

(7) A company or any officer thereof shall not obstruct or hinder the Registrar or person so authorised while exercising any of the powers referred to in subsection (4).

(8) There shall be paid to the Registrar such fees as are prescribed.

9. **Lodging documents** - (1) Every document required or permitted to be lodged with or filed by the Registrar under the provisions of this Act shall be lodged with the Registrar through a trustee company.

(2) Every application to the Registrar for any certificate issued under the Act or for any extract or copy of any document filed by the Registrar shall be made through a trustee company: Provided that this sub-section shall not apply where an application is made in respect of an international company by a member of that company and the document, certificate, extract or copy is for his own personal use.

10. **Registered company auditors** - (1) The Registrar may, by notice in the Cook Islands Gazette, appoint any person or company to be a registered company auditor.

(2) No person or company shall perform the duties of auditor of a company unless he or it is a registered company auditor.

(3) The Registrar may revoke any appointment made under subsection (1).

(4) The Registrar shall keep a register of registered company auditors.

(5) The annual fee for registration as a registered company auditor is as prescribed by regulation.

[(6) – (8) Repealed]

(9) No company or person shall appoint a person or company as auditor of an international or foreign company unless the person or company to be appointed auditor has prior to such appointment consented in writing to act as such auditor.

[(10) Repealed]
[Amended Act 1991/31]

11. **Official liquidators** - (1) For the purpose of proceedings in winding-up international companies the Registrar may, by notice in the Cook Islands Gazette, appoint any person or company to be an official liquidator.

(2) The Registrar may revoke any appointment made under subsection (1).

(3) No person or company shall be appointed or act as liquidator of an international company -

(a) if he or it is not an official liquidator; or

(b) if he, it or any company related to it is indebted to the company in liquidation or to a company which is deemed to be related to that company in liquidation by virtue of section 4(5) in an amount exceeding \$1,000; and

(c) unless he or it consents.

(4) The Registrar shall keep a register of official liquidators.

(5) Where an official liquidator is appointed to be a liquidator of an international company, whether by the Court or in a voluntary winding-up, he or it shall forthwith notify the Registrar in writing of any interest which he, it or any company related to it has in the company as an officer or employee of the company or as a partner, employee or employer of an officer of the company or as a partner or employee of an employee of the company.

12. **Registers** - (1) The Register may, subject to this Act and the regulations, keep such registers as he considers necessary and in such form as he thinks fit.

(2) Any officer, member, debenture holder, director or liquidator of an international or foreign company, or any other person with the written permission of such director or liquidator or who can demonstrate to the Registrar that he has a good and cogent reason for doing so (*not being a reason inconsistent with the objectives of this Act*), may, subject to this Act and on payment of the prescribed fee -

(a) inspect any document filed by the Registrar in respect of the company; or

(b) require any certificate issued under this Act or a copy or extract from any document kept by the Registrar in respect of the company to be given or certified by the Registrar,

but save as aforesaid no document filed by the Registrar in respect of a company shall be available for inspection or

copying.

(2A) Notwithstanding the provisions of subsection (2), except in the case of a debenture holder, director or liquidator or in any case where the prior written consent of the international company or the trustee company acting for the international company is given, the Registrar shall not allow any person to inspect any document or provide any person with a copy or extract of any document unless the Registrar has given reasonable notice to the international company of his intention to do so, such notice to include details of the relevant documents and the persons who will inspect or be provided with a copy of such documents.

(3) A copy of or extract from any document filed by the Registrar certified to be a true copy or extract under the hand and seal of the Registrar shall in any proceedings be admissible in evidence as if it were the original document or the part thereof so extracted.

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

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

shall be received as prima facie evidence of the matter specified in that certificate.

(5) If the Registrar is of opinion that any document lodged with him -

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

he may refuse to file the document and request that the document be appropriately amended or completed and re-lodged or that a fresh document be lodged in its place.

(6) If an international or foreign company or person, having been in default in complying with -

- (a) any provision of this Act or of any other law which requires the lodging in any manner with the Registrar of any return, account or other document or the giving of notice to him on any matter; or
- (b) any request of the Registrar to amend or complete and re-lodge any document or lodge a fresh document,

fails to make good the default within 60 days after the service on the company or person of a notice requiring it to be done, the Registrar may order the company and any officer thereof or such person to make good the default within such time as is specified in the order.

(7) Nothing in this section shall prejudice the operation of any enactment or other section of this Act imposing

penalties on a company or its officers or such person in respect of any such default as aforesaid.

(8) Any person who inspects, copies or permits to be inspected or copied any document filed or kept by the Registrar in respect of any company otherwise than as entitled or authorised in terms of subsection (2) (or, in the case of the Registrar and officers appointed pursuant to section 8, otherwise than for the purposes of this Act) shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years in respect of each such offence.

[Amended Act 1986-87/26; Act 1989/22; Act 1991/31]

PART III

CONSTITUTION OF COMPANIES

Division 1 - Incorporation

13. **Formation of companies** - (1) Subject to this Act, a trustee company or any other person or persons may, by subscribing his, their or its name to a memorandum and complying with the requirements as to registration, form an international company for any lawful purpose.

(2) If a subscriber to a memorandum is a company or a trustee company, the memorandum may be subscribed by the company or the trustee company, as the case may be, under its seal or by some person duly authorised on its behalf.

(3) Every international company incorporated under this Act shall be:

- (a) a company limited by shares; or
- (b) a no liability company; or
- (c) a company limited by guarantee; or
- (d) a company limited by both shares and by guarantee; or
- (e) an unlimited company; or
- (f) a mutual company;

(4) Nothing in subsection (3) of this section shall in any way be construed to limit an international company's ability to issue debentures pursuant to section 57 of this Act.

[Amended Act 1991/31]

14. **Registration and incorporation** - (1) Subject to subsections (10) to (20), a person desiring the incorporation of an international company shall cause to be lodged with the Registrar the memorandum and articles of the proposed company together with an unsigned true copy thereof and the other documents required to be lodged by or under this Act, and the Registrar shall upon payment of the prescribed fees and subject to this Act, register the company by filing the memorandum and articles.

(2) The Registrar may require the trustee company lodging the documents referred to in subsection (1) to lodge with those documents a certificate by the trustee company stating that, to the best of the trustee company's

knowledge, all or any of the requirements of this Act and the customer identification and verification requirements of the Financial Transactions Reporting Act 2004 have been complied with and the Registrar may accept that certificate as sufficient evidence of such compliance.

(3) On the filing of the memorandum the Registrar may certify under his hand and seal that the company is, on and from the date specified in the certificate, incorporated and if he so certifies he shall deliver his certificate to the trustee company which lodged the documents or as the trustee company directs in writing.

(4) The first certificate of incorporation shall be valid for 12 months from the date of incorporation and shall be renewable thereafter for further periods of 12 months from each anniversary of the date of incorporation upon due lodgement of the annual return of the company and payment of the prescribed fee therefor and such renewal certificate shall be issued by the Registrar within 14 days after the due lodgement of the annual return and payment of such fee and shall be delivered to the trustee company which lodged the return or as the trustee company directs in writing.

(5) Every certificate of incorporation shall show on its face the date of its expiry.

(6) Any director or officer of an international company who after the expiry of the certificate of incorporation of that company and before the issue of a current certificate of incorporation of that company does any act that causes that company to carry on business after the expiry of its certificate of incorporation and before the issue of a current certificate of incorporation shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding \$10,000.00.

(6A) Until such time as an international company is dissolved pursuant to the provisions of this Act, the international company shall continue its corporate existence (without rendering defective any legal or other proceedings instituted against the company or affecting any property, rights, powers, authorities, duties, functions, liabilities or obligations of the international company or any other person) notwithstanding that the certificate of incorporation of the international company may have expired and not been renewed within the time specified in this section.

(7) On and from the date of incorporation specified in the certificate of incorporation of an international company, but subject to this Act, the subscriber or subscribers to the memorandum, while he remains a member or they remain members, as the case may be, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an international company and of suing and being sued and having perpetual succession and a corporate seal but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

(7A) Save as may be specified by this Act or by contract, the members of an international company do not owe any duty, liability or obligation to the international company, any other member of the international company, any creditor of the international company or any other company related to the international company.

(8) A certificate of incorporation under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of incorporation and of matters precedent and incidental thereto have been complied with and that the international company referred to therein was duly incorporated under this Act.

(9) Except where an international company is incorporated by a trustee company pursuant to a direction under subsection (10), every subscriber to the memorandum shall, upon its incorporation, be a member of the international company and on the incorporation of the company -

- (a) if the articles so permit and the subscriber so desires and has paid up in full the nominal value of his shares, he shall be issued with a share warrant or warrants for the shares agreed to be taken by him in

the memorandum and the appropriate entry shall be made in the company's register of members; or

- (b) in any other case, without formal allotment of shares, he shall be entered as a member in its register of members in respect of the share or shares subscribed for by him in the memorandum.

(10) A person desiring the incorporation of an international company having a share capital may, if he so desires, cause to be delivered to a trustee company an unsigned memorandum of the proposed company together with an unsigned true copy thereof and -

- (a) a request addressed to the trustee company, in writing and signed by him, that -
 - (i) the trustee company incorporate an international company on his behalf;
 - (ii) no share or share warrants be issued to him;
 - (iii) he not be a member of the international company so incorporated; and
 - (iv) one share be issued on incorporation to the trustee company; and
 - (v) includes, unless that person requests that a debenture should not be issued, the trustee company that person nominates to be the Custodian for the purposes of section 15; and
- (b) an amount sufficient to pay -
 - (i) the fees payable on lodgement of the documents to be lodged for incorporation of the company; and
 - (ii) the fees payable to the trustee company in respect of its services in and about the incorporation of the company and the issue of the shares to be issued pursuant to the request in paragraph (a),

the person may also, if he so wishes, nominate a person or persons for the purposes of section 15.

(11) A trustee company, if it sees fit, upon receipt of the documents and payments referred to in subsection (10), may seal the memorandum for the incorporation of the international company and shall cause the memorandum to be lodged with the Registrar together with the prescribed fees therefor and at the same time shall send an appointment in writing in the form required by Table A and effective for the purpose of appointing as the only director of the company a resident director from the trustee company.

(12) Upon the incorporation of the international company, the trustee company which incorporated the company shall be the only member of the company and, without any formal allotment of its share, that trustee company shall be entered as a member in the register of members of the company in respect of the share referred to in subsection (10)(a) and such share shall be deemed to be fully paid up and shall be issued to the trustee company.

(13) Subject to section 15(6), where a share is issued to a trustee company under this section, that share shall, notwithstanding any provision of the articles, be forfeited to the international company at the expiration of 3 months from the date of its incorporation and the company shall cause an entry to that effect to be made in its register of members and the certificate of that share shall be delivered up to the company and cancelled.

(14) Where a request of the kind referred to in subsection (10)(a) has been made to a trustee company, the

person making the request shall not have any right to have an international company incorporated or to have any shares or debentures issued and it shall be in the absolute discretion of the trustee company whether upon receiving that request it acts in accordance with subsection (11) or not: Provided that, if the trustee company neglects or refuses to act in accordance with provisions of subsection (11), that trustee company shall, after deducting such costs, charges and expenses as in its discretion are properly attributable to its consideration of that request, repay the balance to the person making the request or as he directs.

(15) The Registrar shall be the only person entitled to enforce the performance of the obligations of a trustee company under this section and section 15.

(16) A request referred to in subsection (10)(a) and any variation of that request made under this subsection may be revoked or varied only by the Registrar and then only with the consent of the person who made the request or such person as he nominates for the purpose of that request.

(17) Subject to section 15, where a request of the kind referred to in subsection (10)(a) is made to a trustee company for the incorporation of an international company, no contract, agreement or arrangement in respect of that company shall arise, or be deemed to have arisen, between the person making the request and the trustee company notwithstanding that the trustee company may incorporate that company or make any repayment of the money received from that person, nor shall the trustee company be, or be deemed to be, the agent of that person in respect of anything done by it as a consequence of the request.

(18) Where a request of the kind referred to in subsection (10)(a) is made in respect of an international company, no articles other than the articles as set out in Table A of Schedule 2 shall be adopted as the articles of the company until after the expiration of 3 months from the date of its incorporation: Provided that, whereby any such request the trustee company incorporating a company is specifically requested to -

- (a) file articles with the memorandum; or
- (b) to cause the company to adopt new articles before the expiration of 3 months from the date of its incorporation,

such articles being additional or in substitution for all or any of the articles as set out in the said Table A, the trustee company, if it thinks fit, notwithstanding this subsection, may lodge those articles with the Registrar at the same time as it lodges the memorandum or at any time within 3 months of the incorporation of the company and those articles, upon the filing thereof and until altered in any manner provided for by this Act, shall be the articles of the company.

(19) After incorporation any person who agrees to become a member of an international company and whose name is entered into its Register of Members or who becomes the bearer of a share certificate issued to bearer shall be a member of the company.

(20) Regulations may be made prescribing the form of documents to be used pursuant to this section.

[Amended Act 1989/22; Act 1991/31; Act 2003/5; Act 2004/14]

14A. **Registration of company as international shipping company** – (1) If the memorandum of association of a company limited by shares and incorporated under section 14 contains the statements specified in subsections (1) and (2) of section 18AA –

- (a) the company shall be registered on incorporation as an international shipping company; and
- (b) the certificate of incorporation of the company and every certificate of renewal of registration of the

- company shall state thereon that the company is an international shipping company.
- (2) Notwithstanding subsection (1), the Registrar shall not permit a company to remain registered as an international shipping company unless the Registrar is satisfied within one month of the registration of the company and upon the occasion of each renewal of registration of the company, that the company is the owner, charterer or manager of a ship registered or provisionally registered on the register of vessels kept and maintained pursuant to Part III of the Shipping Act 1998.
 - (3) For the purposes of subsection (2), the Registrar may require or view such documents or other evidence as shall be necessary for the Registrar to be satisfied for the purposes of that subsection and the Registrar shall, notwithstanding any provision of the Shipping Act 1998 be entitled during usual business hours to inspect without payment of any fee, any document on the Cook Islands register of vessels relating to the registration, ownership, chartering or managing of a ship by a company that is registered as an international shipping company.
 - (4) If at any time an international shipping company shall cease to be an owner, charterer or manager of a ship registered or provisionally registered on the register of vessels pursuant to Part III of the Shipping Act 1998, the –
 - (a) trustee company where the registered office of the international shipping company is situate; and
 - (b) the Registrar of Vessels,
 shall, within 14 days of that fact coming to their knowledge, notify the Registrar of International and Foreign Companies of that fact and that Registrar shall note the register of international and foreign companies to that effect.
 - (5) If at any time the Registrar is not satisfied that an international shipping company is the owner, charterer or manager of a ship registered or provisionally registered on the register of vessels pursuant to Part III of the Shipping Act 1998, or upon receiving a notification from the trustee company or from the Registrar of Vessels pursuant to subsection (4), the Registrar shall send to the company a notice or facsimile addressed to the registered office of the company in the Cook Islands, to that effect and stating that if an answer satisfying the Registrar to the contrary is not received within 2 months from the date thereof, the Registrar will, unless the company has sooner been dissolved, strike the name of the company off the register of international and foreign companies. At the expiration of the time specified in the letter forwarded to an international shipping company under this subsection, or such further time as the Registrar deems fit, the Registrar shall unless the company has sooner dissolved or unless cause to the contrary is previously shown, strike the name of the company off the register of international and foreign companies and the company shall thereupon, subject to section 197(3), be dissolved.
 - (6) A company that is not registered as an international shipping company on its incorporation, shall not subsequently be registered as an international shipping company.”

[Added Act 2005/8]

15. **Issue of bearer debentures** – (1) Unless a person desiring the incorporation of an international company by a trustee company under section 14(10) delivers to the trustee company together with the unsigned memorandum, a written request that a debenture should not be issued, the international company shall, as soon as is convenient after incorporation –

- (a) prepare a form of bearer debenture which shall incorporate the provisions set forth in Table B; and
- (b) shall cause the same to be signed by the resident director,

which form of bearer debenture shall be expressed to secure to the bearer a sum equal to the fees paid to the trustee company under section 14(10)(b)(ii), expressed in dollars.

- (2) A bearer debenture issued by an international company shall not take effect as a debenture,

nor shall it give rise to rights against the company, until there is annexed to the debenture an acknowledgement signed by the Custodian nominated under section 14(10)(a)(v) that it holds that debenture in custody for the person who nominated that Custodian or for such other person as he directs.

(3) When the requirements in subsection (2) have been satisfied, the bearer debenture shall be entered in the records of the company and thereupon the company shall be deemed to have resolved to issue the bearer debenture and the same shall thereupon be a specialty debt due from the company to the bearer situate in the place where the bearer is.

(4) Where a trustee company appoints as the director of an international company a resident director pursuant to section 14(11), that director may not be removed nor shall any additional director or directors be appointed until such time as the share referred to in section 14(10)(a) has been issued to the trustee company and the debenture, if any, to be issued pursuant to subsection (1) has been issued.

(5) Notwithstanding subsection (4) and anything contained in the articles of an international company, until the share referred to in section 14(10)(a) has been issued to the trustee company to which the request for incorporation was made under that section and the debenture, if any, to be issued pursuant to subsection (1) has been issued, that trustee company may appoint another officer of the trustee company as a director in substitution for the officer so appointed and may remove any officer appointed as a director of the company.

(6) Subject to subsection (10) in the event of a form of bearer debenture of the kind referred to in subsection (1) not having been issued by the expiration of 3 months from the date of incorporation of the international company, the share issued to the trustee company under section 14 and any income, rights and accruals thereto shall, from that time on –

- (a) be held by that trustee company upon trust for the person or persons, if any, nominated under section 14(10); or,
- (b) if there is no such nomination, for the person who made the request referred to in section 14(10),

and the trustee company shall be entitled to be indemnified out of the assets of the international company for its reasonable costs and expenses in administering the trusts upon which that share is held and in making payment of such fees and charges payable by the international company as it sees fit to make on behalf of the international company.]

(7) Where a person nominated under section 14(10) has died before the expiration of 3 months from the date of incorporation of an international company by the trustee company to which the request for such incorporation was made, then, unless his nomination was made conditional upon his being alive at that time, the share issued to the trustee company under section 14 and any income, rights and accruals thereto, from that time on, shall be held by that trustee company upon trust for the executor of this will or the administrator of his estate, as the case may be.

(8) Subject to subsection 10 where a person nominated under section 14(10) has died before the expiration of 3 months from the date of incorporation of an international company by the trustee company to which the request for such incorporation was made and the nomination was made conditional upon his being alive at the time of such issue, then, unless any other person has been nominated to be the beneficiary in his place in the event of his not being alive, the share issued to the trustee company under section 14 and any income, rights and accruals thereto, from that time on, shall be held by the trustee company upon trust for the person who made the nomination or, if that person has died before that time, for the executor of his will or the administrator of his estate, as the case may be.

(9) Where no nomination under section 14(10) has been made, and the person who made the request for the incorporation of an international company referred to in section 14(10)(a) has died before the expiration of 3 months from the date of incorporation of the company by the trustee company to which that request for incorporation was made, the share issued to the trustee company under section 14 and any income, rights and accruals thereto from that time on,

shall be held by the trustee company upon trust for the executor of the will of that person or for the administration of his estate, as the case may be.

(10) Notwithstanding the provisions of subsections (6) and (8) no trustee company shall hold any share on trust for either the person or persons nominated under section 14(10), or for any person or persons who made the request referred to in section 14(10) until that trustee company has received satisfactory evidence as to the identity of that person or those persons.

(11) The evidence of identity a trustee company is required to obtain pursuant to subsection (10) shall be prescribed by regulation.

[Amended 2003/5]

16. Transfer to the Cook Islands of Company Incorporated Outside the Cook Islands - (1) Subject to subsection (5) and to section 225 a company incorporated as a company or corporation under the laws of any country other than the Cook Islands, or of any jurisdiction within such a country, may, if it appears to the Registrar to be so authorised by the laws of that country or jurisdiction, apply to the Registrar to be registered as being continued in the Cook Islands as if it had been incorporated under this Act.

(2) Upon application under subsection (1), supported by such material as he considers adequate and satisfactory, the Registrar may, if he is satisfied that the consent of such number or proportion of the shareholders, debenture holders and creditors of the company as may be required by the laws of that country or jurisdiction and the consent of the proper officer of that country or jurisdiction, to such registration has been obtained by the company, register such company as being so continued and, if so registered, the company shall be deemed thereafter to be an international company incorporated under this Act and domiciled in the Cook Islands: Provided that no company may be registered under this section if -

- (a) its winding-up has commenced;
 - (b) a receiver of its property has been appointed; or
 - (c) there is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted.
- (3) The registration of a company under this section shall not operate -
- (a) to create a new legal entity;
 - (b) to prejudice or affect the continuity of the company;
 - (c) to affect the property of the company;
 - (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the company or any other person; or
 - (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person.
- (4) Upon the registration of a company under this section -
- (a) so much of its constitution as would, if it had been incorporated under this Act, have been required by

this Act to be included in its memorandum of association, shall be deemed to be the memorandum of association of the company; and

- (b) so much of its constitution as does not, by virtue of the paragraph (a), comprise its memorandum of association, shall be deemed to be the articles of association of the company,

and shall be binding on the company and its members accordingly.

(5) A company registered under subsection (1) shall pay the same fee for registration as if it were being registered upon incorporation in the Cook Islands.

17. Prior approval for transfer to the Cook Islands of a company incorporated outside the Cook Islands - (1) A company or corporation referred to in section 16(1), when it applies to be registered under that section, may request that such registration be approved in principle but deferred until a later date of the applicant's choosing, provided such later date is within 36 months of such approval in principle.

(2) The Registrar shall follow the procedure laid down in section 16(2) as if the company or corporation had not requested a deferment of registration except that, if he is satisfied in accordance with that subsection, instead of forthwith registering the company as being continued, he shall notify the applicant that its application has been approved in principle.

(3) A company or corporation shall not be, nor be deemed to be, registered as being continued in the Cook Islands under this section, until such time as it has been notified by the Registrar that its application has been approved in principle and has forwarded to the Registrar a notice requesting that registration take effect forthwith provided that such notice is received by the Registrar within 36 months of the approval in principle.

(4) The Registrar shall, subject to section 225, upon receipt of the notice referred to in subsection (3), register the company or corporation as being so continued.

(5) A company or corporation requesting deferment on registration under this section shall, on being notified by the Registrar pursuant to subsection (2) that its registration has been approved in principle, pay the same fee as if it were being registered upon incorporation in the Cook Islands under this Act.

18. Requirements as to memorandum - (1) The memorandum of every international company shall be printed and divided into numbered paragraphs and dated and shall state the following:

- (a) the name of the company;
- (b) in relation to the share capital of the company (*if any*);
 - (i) where the company proposes to issue only par value shares the amount of the share capital with which it is proposed to be registered and the division thereof into shares of a fixed amount;
 - (ii) where the company proposes to issue only no par value shares, the number of shares; or
 - (iii) where the company proposes to issue both par value shares and no par value shares, the fixed value of the par value shares and the number of no par value shares;
- (c) the full name and address of the subscriber thereto or the full names and addresses of the subscribers

thereto, as the case may be; and

- (d) that the subscriber or subscribers to the memorandum desire the formation of an international company and that on incorporation shares of the number and class in the capital of the company set out are to be issued to the subscriber or the respective subscribers.
- (e) whether the company is a company limited by shares, a no liability company, a company limited by guarantee, a company limited both by shares and by guarantee, an unlimited company, an international shipping company, or a mutual company.

(2) The memorandum of an international company may, in addition to the requirements of subsection (1), also state the objects of the company.

(3) *[Repealed]*

[Amended Act 1991/31; 2005/8]

18A. **Liability of members** - (1) Subject to this Act an international company is:

- (a) a legal entity, considered in law as a fictitious person, distinct from its members, and with separate rights, obligations and liabilities; and
- (b) an entity with perpetual succession.

(2) Notwithstanding any rule of common law or equity to the contrary, but subject always to other provisions of this Act, the separate corporate personality of an international company may be ignored only in cases of:

- (a) actual agency or actual trust save that membership of the same group of companies shall not raise any presumption as to agency or as to trust; or
- (b) actual fraud (as contrasted with any action which the law of equity may regard as improper).

(3) In the case of a company limited by shares, members shall be liable only to the international company to the amount (if any) unpaid on the shares respectively held by them.

(4) In the case of an unlimited company, the liability of the members shall not be limited.

(5) In the case of a no liability company members shall have no liability to the international company.

(6) Each of the rights and obligations of members of an international company (including the right to vote and the right to receive dividends) are severable and capable of being transferred, charged, or otherwise dealt with independently from the other rights of that member.

(7) In the case of a company limited by guarantee, a member is liable to the international company only to the extent to which that member has undertaken to contribute from time to time and in the event of it being wound up: provided that this liability shall cease three months (or such longer period as may be specified in the articles) after that person ceases to be a member of the international company.

(8) In the case of a company limited both by shares and by guarantee a member is liable to the international company:

- (a) in the case of members who have given a guarantee, only to the extent to which that member has undertaken to contribute from time to time and in the event of it being wound up: provided that this liability shall cease three months (or such longer period as may be specified in the articles) after that person ceases to be a member of the international company; and
- (b) in the case of members who are shareholders, only to the extent of any amount unpaid on the shares respectively held by them.

[Added Act 1991/31]

18AA. **Additional matters to be stated in memorandum of international shipping company** – (1) The memorandum of association of a company limited by shares may state that the company is an international shipping company.

(2) The memorandum of association of an international shipping company shall state that the principal objects of the company are to be the owner, charterer or manager of a ship registered or provisionally registered on the register of vessels pursuant to Part III of the Shipping Act 1998.

[Added Act 2005/9]

18B. **No liability companies** - (1) The acceptance of a share in a no liability company (whether by allotment or by transfer) does not constitute a contract on the part of the shareholder to pay any calls in respect of that share or to make any contribution to the debts and liabilities of that international company; and any such shareholder is not liable to be sued for any calls or contributions by the no liability company.

(2) Calls upon shares in a no liability company shall be so made that they are payable not more than 90 days from the date on which the call is made.

(3) Subject to the articles of the international company providing for a longer period, any share in a no liability company upon which a call is unpaid at the expiration of 14 days after the day for its payment is thereupon forfeited without the need for any resolution of the directors (or any other proceedings) and may be offered for sale or otherwise dealt with in the manner and form specified in the article of the international company.

(4) The articles of a no liability company may regulate all other matters concerning the corporate activities of the international company including without limitation:

- (i) any distributions of the assets of the international company on a winding up or otherwise as between the members;
- (ii) the priorities of payment as between different shareholders and between shareholders and promoters or vendors;
- (iii) provisions as to forfeiture of shares;
- (iv) the provisions as to dealing with shares held in trust; and
- (v) the rights and obligations of members other than as specified in this Act.

(5) the permissible objects, powers and activities of a no liability company are not restricted other than as may be specifically prohibited by this Act.

(6) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of no liability companies.

18C. **Companies limited by guarantee and companies limited both by shares and by guarantee** - (1) Notwithstanding any rule of common law or equity dealing with the nature of guarantees, where an international company is a company limited by guarantee, or is a company limited both by shares and by guarantee, a guarantee given by a member is deemed to be a proprietary interest which is capable of constituting a membership interest in the international company and also of being freely transferred, assigned, charged or otherwise disposed of or dealt with to or in favour of any person in the manner prescribed in the articles of the international company; and such transfer, assignment, charge or other disposition or dealing shall not affect the validity of the guarantee, but shall transfer both the membership interest and the guarantee obligation to that other person.

(2) In the case of a transfer or other absolute disposition of such a guarantee as referred to in subsection (1), the transferor shall no longer be a member of the international company.

(3) The transfer of a guarantee interest shall be effected by notice in writing to the international company.

(4) In the case of a company limited both by shares and by guarantee, nothing in this Act shall require a shareholder to also be a guarantee member of that international company or vice versa.

(5) Subject to the articles and any contract to the contrary, a guarantee member may surrender his guarantee to an international company, and following any such surrender made in writing, his liability shall cease absolutely three months after the date of such surrender.

(6) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of companies limited by guarantee or companies limited by both shares and by guarantee.

[Added Act 1991/31]

18D. **Unlimited companies** - (1) An unlimited company may have share capital in which case it shall state in its memorandum of association the amount of that share capital and the division of that share capital into shares or a fixed amount and the shareholders shall be liable for all the debts of the unlimited company.

(2) An unlimited company may be without share capital and the subscriber to the memorandum of association shall be liable for all the debts of the unlimited company.

(3) Sections 46, 54 and 54A of this Act shall not apply to an unlimited company.

(4) The liability of any director of an unlimited company shall not be unlimited but shall be determined in accordance with the provisions of this Act.

(5) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of unlimited companies.

[Added Act 1991/31]

18E. **Mutual companies** - (1) In this Act "mutual company" means:

(a) any international company licensed under the Off-Shore Insurance Act, 1981-82; or

- (b) any other international company approved by the Cook Islands Monetary Board for the purposes of this section;

"Premiums" means the premiums payable on any insurance, re-insurance, guarantee, indemnity, superannuation, pension or investment policy issued or effected by a mutual company to, or on behalf of, any member of the mutual company.

(2) Any person to whom a mutual company issues an insurance, re-insurance, guarantee, indemnity, superannuation, pension investment policy or contract may, if so provided by the articles, be a member of such mutual company.

(3) A member of a mutual company is liable to the company only to the extent of any unpaid premiums (or any undischarged portion thereof) due to the mutual company (or any contractual amount pending) on the date of the commencement of the winding up from such member.

(4) The provisions of this section shall apply to a mutual company and to the relevant member whether or not the mutual company is a company limited by shares or by guarantee or by both.

(5) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of mutual companies.

[Added Act 1991/31]

18F. **Change of status** - (1) Every international company incorporated (or continued) under this Act may, unless its memorandum otherwise provides, change its status from any of the types of companies specified in paragraphs (a) to (f) of section 13(3) to any other type of company specified therein in accordance with this section; and such change may be effected notwithstanding that at some earlier time the company has been any other (or the same) type of company as contemplated by the provisions of that subsection.

(2) An international company may change its status only if all of the following requirements are complied with:

- (a) the proposed change is specifically authorised by a special resolution of the members of the international company and is given effect to, as contemplated by subsection (3) within six months from the date of such resolution; and
- (b) the directors make a statutory declaration which is lodged with the Registrar that:
 - (i) the change of status will, in their honest belief, not result in the international company thereby being incapable of meeting its obligations to its creditors as they fall due; and
 - (ii) the international company has complied with all the provisions of this Act (including the payment of any fees due to the Registrar); and
 - (iii) the memorandum and articles will be duly amended within at least three days to reflect the change of status.

(3) The change of status of an international company shall take effect upon the day upon which it files a copy of the amended memorandum and articles with the Registrar.

(4) Where:

- (a) any member of an international company did not vote in favour of the member's special resolution to change the status of the international company; and
- (b) the change of status may have the effect of increasing the liability of that member; -

then except in so far as that change was made in accordance with the rights of that member as were specified in the articles of the international company at the time that person became a member, that member may either:

- (i) at any time within 60 days of the passing of the resolution, forfeit his membership interest to the international company whereupon his liability shall be immediately and absolutely terminated; or
- (ii) lodge an application with the Registrar to have the change of status of the international company cancelled, and if any such application is made the change of status shall not have effect until confirmed by the Registrar and the provisions of subsections (2), (3), (4) and (5) of section 55 of this Act shall apply mutatis mutandis where any such application is made.

(5) A member who has forfeited his membership interest pursuant to subsection (4)(i) shall receive from the international company such amount as may be specified in the articles or as may be agreed or, failing that such amount as may be determined by the Registrar (or a chartered accountant approved by the Registrar, whose costs are to be paid by the international company) as representing that members proportional interest in the realisable net tangible assets of the international company save however that any such amount shall be paid only to the extent to which the international company would not otherwise be rendered insolvent.

(6) A certificate of change of status, in the form of a certificate of incorporation issued by the Registrar shall be conclusive evidence that all the requirements of this Act with respect to the change of status have been complied with and that the international company is henceforth of the type stated in that certificate, being a company validly incorporated pursuant to this Act.

(7) Any change in status of an international company pursuant to this section shall not operate to:

- (a) create a new legal entity;
- (b) prejudice or affect the identity of the body corporate, or its continuity;
- (c) affect the property or rights or obligations of the international company; or
- (d) render defective any legal proceedings whatsoever.

[Added Act 1991/31]

19. **Alteration of Memorandum** - (1) Subject to any limitation in its memorandum an international company may alter any of the objects or powers set out in the memorandum by a special resolution of the members or, where permitted by its memorandum, by a resolution of the directors.

(2) An international company that alters its memorandum must, within 21 days of the resolution having been passed, submit a copy of the alteration and the resolution authorising such alteration to the Registrar and the Registrar must retain and register the copy of the alteration and the resolution.

(3) Notwithstanding any failure to submit such a resolution to the Registrar the resolution shall be effective from the date of its passing.

(4) Every officer of the international company who knowingly permits a contravention of the provisions of this section is guilty of an offence under this Act.

[Amended Act 1986-87/26; Act 1991/21]

Division 2 - Status and Name

20. **Powers of companies** - (1) The powers of an international company shall include, unless expressly excluded or modified by the memorandum or the articles, the powers set forth in Schedule 1 and such other powers as are set out in its memorandum or articles or granted to it generally or specially by regulations made under this Act.

(2) Without limiting the generality of subsection (1) an international company in excluding or modifying the powers set forth in Schedule 1 may provide that the company has the powers of a natural person (as if that person were a body corporate) and, without limiting the generality of the foregoing, has power to -

- (a) Issue and allot fully or partly paid shares in the company;
- (b) Issue debentures of the company;
- (c) Distribute any of the property of the company among the members, in kind or otherwise;
- (d) Give security by charging uncalled capital;
- (e) Grant a floating charge on the undertaking or property of the company;
- (f) Procure the company to be registered or recognised as a body corporate in any place outside the Cook Islands;
- (g) Make provision in connection with the cessation of the whole or a part of the business of the company, or of any subsidiary of the company, for the benefit of any subsidiary of the company, for the benefit of employees or former employees of the company or of a subsidiary of the company or for the dependants of such employees or former employees; and
- (h) Do any other act that it is authorised to do by any other enactment or rule of law in the Cook Islands or (except where such act is expressly prohibited by any act regulation by-law or rule of the Cook Islands having application to international companies) elsewhere.

(3) The powers of an international company shall subject to the terms of the memorandum and articles be exercisable in the Cook Islands and elsewhere.

(4) The powers of an international company may be exercised whether or not such exercise -

- (i) may advance its business;
- (ii) is in the best or commercial interests of the company;
- (iii) may advance or assist the business of some other person at the expense or to the detriment of

the company.

(5) Any international company may restrict its powers by making express provision for the period during which those powers may be exercised or during which it may carry on business. In any such case unless -

- (a) The memorandum or the articles otherwise provide; or
- (b) The winding up of the company has previously been commenced or deemed to have been commenced in accordance with the provisions of Part IX; then

upon the date or upon the happening of the event or termination of the period by which the period of exercise of the powers is so restricted the directors shall immediately take all steps as may be necessary to effect the winding up of that company in accordance with the provisions of Part IX of the Act.

[Amended Act 1989/22]

20A. **Pre-Incorporation contracts** - (1) This section applies to -

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

(2) Notwithstanding any enactment or rule of law, any contract to which this section applies may be ratified 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. A contract so ratified shall, upon ratification, be valid and enforceable as if the company had been a party to the contract when it was made.

(3) For the purposes of this section, a contract to which this section applies may be ratified by a company in the same manner as a contract may be made by a company under section 29 of this Act, and the provisions of section 29 of this Act shall have effect as if references in that section to making a contract were references to ratifying a contract.

(4) Notwithstanding any enactment or rule or law, in a contract to which this section applies, 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 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.

(5) The amount of any damages recoverable in an action for breach of warranty implied in any such contract shall be the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract as if the contract had been ratified and cancelled.

(6) Where a company after its incorporation does not ratify a contract to which this section applies, any party to that contract may apply to the Court for an order directing the company to return any property, whether real or personal, acquired pursuant to the contract to that party, or for any other relief in favour of that party respecting any such

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

(7) In any proceedings against a company for breach of a contract to which this section applies and which has been ratified by the company, the Court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief, in addition to or in substitution for any order which may be made against the company, against any person by whom that contract was made in the name of, or on behalf of the company, as the Court considers just and equitable.

(8) Where a company, after its incorporation and with the consent of all other parties to the contract, ratifies a contract to which this section applies the liability of the person who purports to make the contract in the name of, or on behalf of, the company in respect of the contract (including any liability under an order made by the Court thereunder for the payment of damages) shall be discharged.

(9) Subsections (2) and (3) of this section shall apply to a contract to which this section applies entered into before the commencement of this section.

(10) In this section -

"contract" means any legally binding transaction.

[Added Act 1989/22; Amended Act 1991/31]

21. **Ultra Vires Transactions** - (1) No act of an international company including the entering into of an agreement by the company, and no conveyance or transfer of property whether real or personal to or by an international company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

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

- (a) proceedings against the international company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures, or by a trustee company acting as trustee for the holders of those debentures, to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company; or
- (b) any proceedings by the company or by any member of the company against the present or former officers of the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the international company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

22. **Names of companies** - (1) Except with the consent of the Minister, an international company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or includes a name, of a kind that the Registrar is not otherwise willing to accept for registration.

(2) Subject to subsection (2A), an international company shall have as part of and at the end of its name either:

- (a) the word "Corporation" or the abbreviation "Corp."; or
- (b) the word "Incorporated" or the abbreviation "Inc."; or
- (c) the word "Limited" or the abbreviation "Ltd"; or
- (d) the word "Berhad" or the abbreviation "Bhd"; or
- (e) the words "Public Limited Company" or the abbreviation "P.L.C."; or
- (f) the words "Societe Anonyme" or "Sociedad Anonima", or the abbreviation "S.A."; or
- (g) the words "Naamloze Vennootschap" or the abbreviation "N.V."; or
- (h) the words "Besloten Vennootschap" or the abbreviation "B.V."; or
- (i) the word "Aktiengesellschaft" or the abbreviation "A.G.".

(2A) Notwithstanding the provisions of subsection (2), an international company may, in lieu of any of the words or abbreviations in subsection (2), have as part of its name any other words or popular abbreviations of those words in any language being any words or abbreviations which a trustee company can satisfy the Registrar connotes the existence of a body corporate as distinct from any other person or entity and such words or abbreviations may appear at the beginning, the end or elsewhere in the name of the international company in accordance with common practice.

(2B) Any person or entity which carries on business under any name or title being any word or abbreviation referred to in subsections (2) and (2A) unless it is an international company incorporated or foreign company registered under this Act (or a domestic company or an overseas company registered under the Companies Act 1970-71) shall be guilty of an offence against this Act.

(2C) Any international company may apply in writing to the Minister for an exemption from the provisions of this section pursuant to section 224 stating the reasons why the applicant believes this section ought not to apply.

(3) No description of an international company shall be deemed inadequate or incorrect by reason of the use of

-

- (a) any word which being prescribed either by subsection (2) or by regulations is used in lieu of its prescribed abbreviation;
- (b) any abbreviation which being prescribed either by subsection (2) or by regulations is used in lieu of that word in its prescribed unabbreviated form; or
- (c) the symbol "&" in lieu of the word "and" contained in the name of the company or the word "and" in lieu of the symbol "&" in the name of the company.

(4) A person may lodge with the Registrar an application in the prescribed form for the reservation of a name set out in the application as -

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

(5) If the Registrar considers that the application is made bona fide and is satisfied that the proposed name is a name by which the intended international company or the international company could be registered without contravention of subsection (1), he shall, upon payment of the prescribed fee, reserve the proposed name for a period of 6 months from the date of the lodging of the application.

(6) If, at any time, during the period for which a name is reserved, an application is lodged with the Registrar for an extension of that period and the Registrar is satisfied as to the *bona fides* of the application, he may upon payment of the prescribed fee extend that period for a further period of 6 months.

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

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

[Amended Act 1989/22; Act 1991/31]

23. **Change of name** - (1) An international company may by special resolution and with the approval of the Registrar change its name to a name by which the company could be registered without contravention of section 22(1).

(2) If the name of an international company, whether through inadvertence or otherwise and whether originally or by change of name, is a name by which the international company could not be registered without contravention of section 22(1) the company may by special resolution change its name to a name by which the company can be registered without contravention of that section and, if the Registrar so directs, shall so change it within 3 months after the date of the direction or such longer period as the Registrar allows and if the company fails to comply with such direction, it shall be guilty of an offence against this Act.

(3) A change of name pursuant to this Act shall not affect the identity of the international company or any right or obligations of the company or render defective any proceedings by or against the company; any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

(4) Where an international company changes its name under the provisions of this section, it shall forthwith surrender to the Registrar its certificate of incorporation and the Registrar shall issue a new certificate bearing the company's new name, which certificate shall have the same expiry date as that of the certificate surrendered; and the change of name shall take effect only from the date of the issue of the new certificate.

24. **Articles of association** - (1) Except where an international company is incorporated pursuant to a request made to a trustee company under section 14(10), there may be lodged with the memorandum of an international company articles of association signed by the subscribers to the memorandum prescribing regulations for the company, which modify the articles contained in Table A.

(2) Articles shall be -

- (a) printed;
- (b) divided into numbered paragraphs; and
- (c) signed by each subscriber to the memorandum or, if any subscriber is a company, sealed with its company seal or signed on its behalf.

25. **Adoption of Table A** - (1) An international company may adopt all or any of the articles contained in Table A of Schedule 2.

(2) If articles are lodged and filed which neither exclude the articles contained in Table A nor modify the articles contained in that Table, the articles in Table A shall, so far as applicable, be the articles of the international company in the same manner and to the same extent as if they were contained in the articles lodged and filed.

26. **Alteration of articles** - (1) Subject to any limitation in its articles an international company may alter its articles by a special resolution of the members or, where permitted by its articles, by a resolution of the directors.

(2) An international company that alters its articles must, within 21 days of the resolution having been passed, submit a copy of the alteration and the resolution authorising such alteration to the Registrar and the Registrar must retain and register the copy of the alteration and the resolution.

(3) Notwithstanding any failure to lodge such resolution with the Registrar the resolution shall be effective from its date of passing.

(4) Every officer of the international company who knowingly permits a contravention of the provisions of this section is guilty of an offence under this Act.

[Amended Act 1990/4; Act 1991/31]

27. **Effect of memorandum and articles** - (1) Subject to this Act, the memorandum and articles shall when filed bind the international company and the members thereof, including the holders of share warrants.

(2) All money payable by any member to the international company under the memorandum or articles shall be a debt due from him to the company and be situated in the Cook Islands.

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

28. **Copies of the Memorandum and Articles** - (1) An international company on being so required by any member shall send to him a copy of the memorandum and of the articles subject to payment to the company of \$5 or the costs thereof, whichever is the less.

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

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

(3) Where an agreement required to be lodged with the Registrar under section 101 affects the articles of an international company, a copy of the articles shall not be issued by the company after the agreement is entered into unless a copy of the agreement is annexed to the copy of the articles.

(4) If default is made in complying with this section, the international company and every officer of the company who is in default shall be guilty of an offence against this Act.

29. **Transactions and branches** - (1) Contracts on behalf of an international company may be made as follows:

- (a) a contract which if made between private persons would by law be required to be in writing under seal, may be made on behalf of the company either -
 - (i) in writing under the common seal of the company and signed by a director or by some other person appointed by the directors for the purpose: Provided that such signature need not be made contemporaneously with the affixing of the common seal of the company; or
 - (ii) in the case of an international company having only one director, signed by that director; or
 - (iii) in the case of an international company having two or more directors, signed by any two directors.
- (b) a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing and signed by any person acting under its authority, express or implied;
- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied,

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

(2) A document or proceedings requiring authentication by an international company may be signed by an authorised officer to the company and need not be under its common seal.

(3) An international company may by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its agent or attorney to execute instruments on its behalf and any instrument executed by such an agent or attorney on behalf of the company, if executed as a deed, shall have the same effect as if it were under the common seal, or, subject to subsection (5) under the appropriate seal of the company. The provisions of this subsection shall not preclude the company constituting a person as its agent or attorney in any other manner.

(4) An international company may establish a branch in any part of the world.

(5) An international company and any branch thereof may have for use in any place outside the Cook Islands a

seal which shall be a facsimile of the common seal of the company with the addition on its face of the name of that branch. That seal shall be known as the branch seal.

(6) Where an international company has established a branch it may in the instrument establishing the branch or in a subsequent instrument signed or sealed by the resident secretary or under its own seal appoint one or more persons to be branch directors and to constitute a local board, make provision for a branch seal and for its custody and prescribe the person by whom such seal is to be affixed. Subject to any directions or restrictions imposed from time to time by the directors of the company, a branch shall have power to bind the company and to issue shares or debentures of the company.

(7) A branch may enter into transactions in the same manner as the international company may enter into transactions.

(8) Instruments made or authenticated under or by use of any official seal of an international company or a branch thereof shall be as effective as if the common seal of the company had been affixed thereto; the date on which and the place at which the official seal is affixed to any instrument shall be shown on the instrument.

[Amended Act 1989/22; Act 1991/31]

29A. **Persons having dealings with international companies** - (1) A person having dealings with an international company is, subject to subsection (3), entitled to make, in relation to those dealings, the assumptions referred to in subsection (2) and, in any proceedings in relation to those dealings, any assertion by the international company that the matters that the person is so entitled to assume were not correct shall be disregarded.

(2) The assumptions that a person is, by virtue of subsection (1), entitled to make in relation to dealings, transactions or acts with an international company are -

- (a) that, at all relevant times, the memorandum and articles of the international company have been complied with;
- (b) that a person who appears, from the register of directors of the international company, to be a director of that company has been duly appointed and has authority to bind the company, and authorise others to do so, free of any limitation under the articles of the company;
- (c) that a person who is held out by an international company to be an officer or an agent of the international company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by an officer or agent of the kind concerned;
- (d) that a document has been duly authorised and executed by an international company in accordance with section 29, whether or not the common seal of the company has been affixed and without the need to enquire as to whether or not a valid meeting of the relevant officers was, in fact, properly held; and
- (e) that the officers of the international company properly perform their duties to the international company.

(3) Notwithstanding subsection (1), a person is not entitled to make an assumption referred to in subsection (2) in relation to dealings with the company if he had actual knowledge, or suspected, that the matter that, but for this subsection, he would be entitled to assume is not correct; but a person shall be presumed to act in good faith unless the contrary is proven.

[Added Act 1991/31]

30. **Prohibition against Carrying on Business with No Members** - (1) Where an international company carries on business with no members then the last member shall be directly liable both jointly and severally to creditors for all of the debts contracted, and liabilities incurred, by the international company and shall be capable of being sued by a creditor as a principal obligor.

(2) Nothing in subsection (1) shall affect any international company:

- (a) which upon incorporation specifies in its memorandum that it may carry on business notwithstanding that it has no members; or
- (b) which has altered its memorandum so that it may carry on business notwithstanding that it has no members but only if the international company was solvent at the time such alteration was made; or
- (c) which has on issue any debentures of the kind specified in section 57(3) of this Act (and which are not redeemed); or
- (d) which is controlled by a liquidator or receiver, or is subject to any direction of the Court.

(3) Nothing in subsection (1) shall affect the liability of an international company in relation to any of its debts nor the international company's separate corporate personality.

[Amended Act 1989/22; Act 1991/31]

PART IV

SHARES, DEBENTURES AND CHARGES

Division 1 - Shares

31. **Restriction on Inviting Investment from Public** - No person or international company shall -

- (a) issue an invitation to the public to deposit money with or lend money to an international company; or
- (b) issue an invitation to the public or distribute forms of application to the public to subscribe for shares or debentures in an international company,

other than in accordance with Part XII.

32. **Return as to allotments** - (1) Whenever an international company makes any allotment of its shares, the company shall, within 28

days thereafter, cause to be lodged with the Registrar a return of the allotment stating -

- (a) the number of shares comprised in the allotment and the amount paid for such shares;
- (b) the date of the allotment;
- (c) the amount, if any, deemed to be paid, or due and payable on the allotment of each share; and

- (d) where the capital of the company is divided into shares of different classes, the class of shares to which each share in the allotment belongs.

(2) No return of allotment in respect of shares subscribed for in the memorandum or issued to a trustee company pursuant to section 14(10) to (20) shall be required to be lodged.

(3) If default is made in complying with this section, every officer of the international company who is in default shall be guilty of an offence against this Act.

33. **Calls and Forfeiture** - (1) An international company may -

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
- (b) accept from any member the whole or any part of the amount remaining unpaid or any shares although no part of that amount has been called up;
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others; and
- (d) forfeit shares, whether fully paid up or not, on the happening of a specified event in accordance with the terms of issue of those shares but without releasing the member from present uncalled liability and, if any such shares are not reissued, without releasing him from future uncalled liability: Provided that no bearer shares shall be forfeited unless the warrant for those shares is delivered up and cancelled by the company.

(2) The event enabling forfeiture referred to in subsection (1)(d) may be specified by the international company after issue if the terms of issue so provide.

(3) The articles of an international company may provide for or may allow for the directors to provide for the making of calls on shares on the happening of any event.

[Amended Act 1991/31]

34. **Reserve Liability** - An international company by special resolution, may determine that any portion of its uncalled share capital shall not be capable of being called up except in the event of the company being wound up, but no such resolution shall prejudice the rights acquired by any person before the passing of the resolution.

35. **Issue and effect of bearer shares** - (1) An international company may, unless its articles otherwise provide, issue bearer shares (upon incorporation or otherwise), but such shares must be fully paid up. Where an international company issues any bearer share in accordance with this subsection, the company shall also issue a share certificate in respect of the bearer share so issued and such share certificate shall be endorsed with the word "Bearer".

(2) An international company may, unless its articles otherwise provide, upon the request of a holder of any fully paid up registered share redenominate that registered share as a bearer share. Upon the surrender of the certificate of the registered share, the international company shall issue a new certificate to be issued bearing the same number (if any) as the certificate so surrendered and endorsed with the word "Bearer".

(3) An international company may, unless its articles otherwise provide, upon the request of a holder of any

bearer share redenominate that bearer share as a registered share. Upon the surrender of the certificate of the bearer share, the international company shall issue a new registered share certificate bearing the same number (if any) as the certificate so surrendered.

(4) An international company may issue bearer shares in accordance with subsection (1) or redenominate registered shares as bearer shares or vice versa in accordance with subsections (2) or (3), notwithstanding that the company may have no registered shares or bearer shares on issue.

(5) An international company may issue bearer shares in accordance with subsection (1) or redenominate registered shares or vice versa in accordance with subsections (2) and (3) in respect of any or all of a particular class of shares issued or to be issued by the international company.

(6) Any bearer share issued by an international company may carry coupons or other certificates -

- (a) for the payment of dividends; and
- (b) in respect of any other rights determined in accordance with the articles, and, where the articles so permit, such coupons or certificates may be divisible from any other rights attaching to that share.

(7) The redenomination of any registered share as a bearer share or vice versa in accordance with subsections (2) or (3) shall not constitute a cancellation of the existing share and the issue of a fresh share.

(8) A bearer share issued by an international company may be transferred by delivery of the certificate issued in respect of that bearer share.

35A. **Transfer and custody of bearer instruments** – (1) Notwithstanding any other provision in this Act -

- (a) an international company shall not deliver bearer instruments to any person other than a Custodian and no Custodian shall hold any bearer instrument unless the Custodian has first received satisfactory evidence as to the identity of the bearer of the bearer instrument;
- (b) a Custodian shall not deliver a bearer instrument to any person other than another Custodian or to the international company which issued the bearer instrument for the purpose of surrendering that instrument;
- (c) subject to the provisions of this section, a Custodian shall hold any bearer instrument for and subject to the directions of the bearer thereof.

(2) Where the bearer of a bearer instrument requests that –

- (a) a bearer instrument be redeemed or converted to any other type of bearer instrument; or
- (b) a bearer instrument be converted to a registered share; or
- (c) a bearer instrument be converted to an ordinary debenture; or
- (d) the ownership or beneficial ownership of the bearer instrument be transferred,

any such request shall be given to the Custodian holding the said instrument who shall take such steps as may be required of the Custodian to meet the request upon receipt of satisfactory evidence as to the identity of every person who as a result of the request, will –

- (e) be paid the redemption proceeds by the international company; or
- (f) become a registered shareholder or ordinary debenture holder; or

- (g) become the bearer or otherwise a holder of an interest in the bearer instrument or another bearer instrument where the original bearer instrument is converted.

(3) Where a bearer instrument is delivered to a Custodian that is not the trustee company providing the registered office for the international company that issued the bearer instrument, then that Custodian shall provide written notice to the international company at its registered office identifying the bearer instrument in respect of which it is acting as a Custodian.

(4) The evidence of identity a Custodian is required to obtain from the bearer of any bearer instrument, and manner and form of records, shall be prescribed by regulation.

[Added Act 2003/5]

36. **Issue and effect of share warrants to bearer** - (1) An international company may, unless its articles otherwise provide, upon the request of a holder of any fully paid up registered share, or the Custodian of a bearer share, exchange registered or bearer shares in respect of such registered or bearer shares for a share warrant to bearer. Upon the surrender of the certificate of the registered or bearer share, the international company shall issue a share warrant bearing the same number (if any) as the certificate so surrendered.

(2) An international company may, unless its articles otherwise provide, upon the request of a holder of any share warrant exchange that share warrant for shares in respect of the share warrant. Upon the surrender of the share warrant, the international company shall issue and enter on the register of members, shares bearing the same number (if any) as the share warrant so surrendered.

(3) The holder of a share warrant issued by an international company shall be deemed not to be a member of that international company and, subject to subsection (4), shall not be entitled to exercise any of the rights or receive any of the benefits of membership of the international company unless and until such time as the share warrant is surrendered and exchanged for a share certificate pursuant to subsection (2) but shall be entitled to notice of any meeting of the members of the class of shares in respect of which the share warrant is issued if the holder has notified the international company of an address for notices of meetings at the time notices of the meeting are issued.

(4) Any share warrant issued by an international company may carry coupons or other certificates for the payment of dividends and where the articles so permit, such coupons or certificates may be divisible from any other rights attaching to that share.

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

(6) An international company may exchange any share certificate for a share warrant or vice versa in accordance with subsections (1) and (2) in respect of all or any of a particular class of shares issued by the international company.

(7) A share warrant issued to bearer by an international company may be transferred by delivery of the share warrant in accordance with the provisions of Section 35A.

[Amended Act 1991/31; 2003/5; Act 2006/3]

37. **Particulars in register in relation to bearer shares** - (1) Upon the issue of a bearer share or the redenomination of a registered share as a bearer share, the international company shall -

- (a) strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the bearer share is issued; and
- (b) enter in the register of members the following particulars:
 - (i) the fact of the issue of the bearer share or the redenomination of a registered share; and
 - (ii) the date of the issue of the bearer share or the redenomination of a registered share.

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

38. **Particulars in register in relation to share warrants** - (1) Upon the exchange of a share warrant in respect of any share, the international company shall -

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

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

[Amended Act 1991/31]

39. **Effect on meetings** - (1) Whilst any bearer share or share warrant remains unsurrendered the date, time and location of each annual general meeting to be held by the company may be specified:

- (a) in the articles of the international company; or
- (b) where authorised by the articles, on the bearer share certificate or share warrant, and in such case the holder of the bearer share certificate or share warrant shall be deemed to have received proper notice of the meeting and the company shall hold the annual general meeting in accordance with the date, time and location so specified.

(2) Where the date, time and location of each annual general meeting has not been specified pursuant to subsection (1), the annual general meeting shall be held at the registered office of the company at 9.00 am on the 10th day of October in each year in which an annual general meeting is required to be held and the holder of any bearer share certificate or share warrant shall be deemed to have received proper notice of such meeting.

[Amended Act 1991/31]

40. **Premiums received on issue of shares to be share capital** - (1) Where an international company issues shares having a par value at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares may be transferred to an account to be called the "share premium account".

(2) Where assets are acquired by the issue of shares of an international company having a par value and no consideration is recorded, the assets so acquired shall be valued and if the value of the assets is more than the par value of such shares, the difference between the par value of the shares and the value of the assets so acquired may be transferred to the share premium account.

(3) The share premium account may, notwithstanding anything contained in subsections (1) or (2), be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid shares or in writing off:

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

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

(4) Except as provided in subsection (3), the share premium account shall be treated as part of the paid up capital of the international company for the purposes of this Act.

[Amended Act 1989/22; Act 1991/31]

41. **Proceeds of issue of shares of no par value may be stated capital** - (1) Where an international company issues shares having no par value whether for cash or otherwise the whole of the proceeds of the issue may be transferred to an account called the "stated capital account".

(2) Notwithstanding subsection (1), the stated capital account may be applied by an international company in writing off -

- (a) the preliminary expenses of the company; or
- (b) the expenses of, or the commission paid on, the creation or issue of any such shares,

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

(3) Except as provided in subsection (2) the stated capital account shall be treated as part of the paid up capital of the international company for the purposes of this Act.

[Amended Act 1991/31]

42. **Effect of conversion of par value share capital into no par value share capital and vice versa** - (1) Where an international company converts any share having a par value into a share without par value -

- (a) the share capital attributable to that share not being part of any share premium account shall be transferred to the stated capital account;
- (b) the share premium account attributable to that share shall be retained as a share premium account.

(2) Where an international company converts any share of no par value into a share having a par value, there shall be transferred to the share capital account of the company the stated capital account attributable to that share.

(3) Fractions, fractional surpluses or amounts arising in respect of the nominal share capital or the stated capital may be rounded off.

Amended Act 1991/31]

43. **Currency of Shares, Interest-Bearing Shares, Redeemable Shares, Shares with Special Rights and Gift Shares** - (1) An international company shall have power to issue the number of shares stated in its memorandum and those shares may be shares having a par value, or may be shares having no par value, or a combination of both, and may be divided into one or more classes, with such designations, preferences, limitations and relative rights as shall be stated or provided for in the articles and all prices and values given in respect of shares shall be expressed in dollars or in the money of any other country.

(2) The articles may limit or deny voting rights of or provide special voting rights for the shares of any class or the shares within any class to any extent not inconsistent with the provisions of this Act or the regulations.

(3) An international company may issue shares of preferred or special classes and in particular, but without limiting the generality of the foregoing, may issue shares -

- (a) subject to the right of the company to redeem any of those shares at the price fixed by the articles for the redemption thereof or at the price fixed pursuant to power contained therein;
- (b) entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends;
- (c) having preference over any other class or class of shares as to the payment of dividends;
- (d) having a preferential right to a dividend;
- (e) having preference in respect of the assets of the company over any other class or classes of shares upon the voluntary or compulsory liquidation of the company;
- (f) having rights only to return of paid up capital or to return of paid up capital plus no more than a fixed proportion thereof upon a liquidation of the company;
- (g) convertible into shares of any other class or into shares of any series of classes: Provided that shares shall not be converted into a class having prior or superior rights of preferences as to dividends or distribution of assets upon liquidation over shares proposed to be converted unless the consent of all members holding shares having such prior or superior rights is obtained;
- (h) subject to forfeiture by the company in the circumstances or in the event provided in the articles or in terms of issue of the shares: Provided-
 - (i) that the articles shall not be altered to make shares subject to forfeiture which were not originally so issued without the holders thereof being given an opportunity to object thereto and, in the event of their so doing, any alteration to that effect shall be void; and
 - (ii) that a forfeiture or, where there have been previous forfeitures, the last forfeiture shall not be effective for any purpose if it by itself or in any combination with any other forfeiture results

in the reduction of the number of members of the company to less than permitted by this Act;

- (i) unless the articles provide to the contrary, on which interest is payable by the company to the holder at such rates and upon such terms and conditions as are fixed at the time of issue or by the articles: Provided that such interest shall not become due and payable by the company to the holder if the company has any liabilities actual or contingent other than liabilities for interest on shares and, upon a winding-up, there shall be deemed to be no liability in the company for the payment of such interest unless and until the claims of all creditors and the costs of the winding-up have been met or satisfied;
- (j) where the articles so permit and subject to the terms provided therein by way of gift and without receiving any valuable consideration, and such shares may be deemed to be fully paid shares, shares issued by way of gift shall not, if any share certificate has been issued, for 3 months after the date of issue thereof be contained in the same certificate as other shares, any certificates issued for all such shares and the register of members shall clearly express the date of issue of the share or shares to which they relate and for at least 3 months after such date of issue any such certificates and the register of members shall bear a notation clearly written thereon that such shares are liable to forfeiture under the provisions of this section within 3 months of the date of issue and no other note of or relating to the fact that such shares were issued without valuable consideration need be made upon any share certificate but a notification of such issue shall be made in the Minute Book of the company and in the register of members;
- (k) where the articles so permit and subject to the terms provided therein, entitling the holder to forfeit the shares to the international company, whereupon the holder's liability in respect of those shares will be limited to the amount of any calls of amounts (if any) unpaid on those shares where the call is made within a period of three months after the date of forfeiture: Provided that a forfeiture, or where there have been previous forfeitures, the last forfeiture shall not be effective if the forfeiture by itself or in combination with any other forfeiture results in the reduction of the number of members of the international company to less than permitted by this Act. A forfeiture of shares shall be deemed not to result in the reduction of the number of members of the international company to less than permitted by this Act where:
 - (i) at the time of the forfeiture the international company had on issue one or more convertible notes and one or more of the convertible note holders has consented, in advance or otherwise, to the forfeiture - in which event, upon the forfeiture of the shares each convertible note held by the consenting convertible note holder shall be deemed to have been automatically converted into an ordinary share in the international company with a par value of one dollar and the note holder shall be entitled to all of the benefits and rights and subject to all of the obligations and liabilities as a holder of an ordinary share in the company and no fresh issue of an ordinary share shall be necessary; or
 - (ii) at the time of the forfeiture the international company had on issue one or more Table B debentures and did not have on issue any convertible notes, and one or more of the debenture holders has consented, in advance or otherwise, to the forfeiture - in which event, upon the forfeiture of the shares the debentures shall be deemed to have been automatically converted into one ordinary share in the international company for every \$1 secured by the said debenture and the debenture holders shall be entitled to all of the benefits and rights and subject to all of the obligations and liabilities as a holder of ordinary shares in the company and no fresh issue of those ordinary shares shall be necessary or be deemed to have been made;

- (l) where the articles so permit, which have the effect of suspending, automatically or at the election of the holder of those shares, all the rights of other members (including the power to vote and to demand a poll). Every holder of shares issued pursuant to this paragraph (l) shall have such voting rights as the articles provide; and
 - (m) fractional shares carrying the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share or a class or series of shares.
- (4) Where shares are issued by way of gift and without consideration -
- (a) there shall not be issued as, or within 3 months after the date of their issue be converted into, bearer shares, and notice of such issue shall be given to every registered member and every debenture holder and if issued within 12 months after incorporation also to the subscribers to the memorandum; and
 - (b) if at any time within 3 months from the date of issue of such shares any of such persons to whom notice is required by this subsection to be given objects to the issue of all or any of such shares the shares the issue of which is objected to shall be forfeited and the issue shall be deemed never to have been made.

[(5) – (6) Repealed; Amended Act 2006/3]

44. **Redeemable Shares and Repurchase of Shares** - (1) An international company which has issued redeemable shares may, if its articles so provide, redeem those shares provided such redemption complies with the provisions of section 54A of this Act.

(2) Unless the articles otherwise provide, where shares of an international company are repurchased or redeemed by an international company, the purchase or redemption shall constitute a cancellation of the shares and thereupon such shares shall be restored to the status of authorised, but unissued shares.

[Amended Act 1991/31]

45. **Statement of Cancellation** - (1) When redeemable shares of an international company are redeemed or purchased by the company, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this Act and thereupon such shares shall be restored to the status of authorised, but unissued shares, unless the articles provide that such shares when redeemed or purchased may not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the memorandum and articles and shall reduce the number of shares of the class so cancelled which the company is authorised to issue by the number of shares so cancelled.

(2) The statement of cancellation shall be in or to the effect of the form prescribed and shall be lodged with the Registrar.

(3) Upon the filing of a statement of cancellation and repayment of fees and costs in relation thereto and as from the date of redemption or purchase as the case may be, the issued capital of the international company shall be deemed to be reduced by the amount of the shares so cancelled and, in the case of a company whose articles provide that such shares shall not be reissued, the filing of the statement from the date aforesaid shall operate also as a reduction of the number of shares so cancelled which the company is authorised to issue.

(4) Nothing contained in this section shall affect any right to cancel shares or to reduce capital in any other manner permitted by this Act.

46. **Dealing by a company in its own shares** - (1) Subject to any provision to the contrary in the articles, an international company may provide financial assistance whether directly or indirectly, and whether by way of loan, guarantee, or otherwise, for the purpose of, or in connection with the purchase or subscription of its own shares, the shares of any subsidiary or of any holding company.

(2) An international company may purchase its own shares if the articles provide for such purchases to be made and if the directors honestly believe that any purchase by the international company of its own shares will not result in the international company thereby being incapable of meeting its obligations to its creditors as they fall due, within the meaning of section 54C.

(3) Where an international company purchases its own shares, other than out of current or prior year profits (including capital profits), any other realised gains, or from any other reserves, there shall be lodged with the Registrar for filing within 42 days of the company having effected such purchase a declaration made by a majority of the directors of the company stating with reasonable accuracy the nature of the purchase and any reduction of liability of any member as a result thereof.

(4) If this section is not complied with every officer of the international company in default shall be guilty of an offence against this Act.

[Amended Act 1986-87/26; Act 1991/31]

47. **Cancellation of Re-acquired shares by an International Company** – An international company may at any time by resolution of its directors cancel all or any part of the shares of the company of any class re-acquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed in accordance with the regulations.

If an international company having re-acquired its shares does not cancel those shares it shall enter in the appropriate register its own name as the transferee of those shares and shall thereupon be deemed for all purposes (other than for the purposes of section 30) to be a member of the company.

[Amended Act 1989/22]

48 *[Repealed by 1989 no. 22]*

49 *[Repealed by 1991 no. 31]*

50. **Issue of Shares of Par Value at a Discount** - (1) Subject to this section, an international company may issue par value shares of the company of a class already issued at a discount.

(2) No shares shall be issued at a discount while any share warrants for the international company remain unsurrendered unless provided for in the terms of the issue of those warrants.

(3) As application to issue shares at a discount shall be made to a trustee company and shall be accompanied by the names and addresses of all members together with notices addressed to those members notifying them of the proposed issue.

(4) The trustee company to which application is made shall, upon receipt of the application and the notices, despatch those notices and inform the members to whom they are addressed that any objection must be conveyed so as to be received by the trustee company or the Registrar within 42 days from the date of the notice.

(5) On the expiry of 60 days from the date of despatch of the notices referred to in subsection (3), the trustee company shall lodge the application, together with any objections received by it, with the Registrar.

[Amended Act 1991/31]

51. **Issue Price of Shares of No Par Value Requiring Special Resolution** - (1) No international company shall issue shares having no par value of a class already issued at a price lower than an amount arrived at by dividing that part of the stated capital contributed by already issued shares of that class, by the number of issued shares of that class, unless the issue price of such shares is authorised by a special resolution of the company.

(2) The notice convening the meeting for the purpose of passing the special resolution referred to in subsection (1) shall be accompanied by a report by the directors setting out the reasons for the proposed lower issue price.

(3) An international company shall, within 21 days from the date of passing a special resolution under subsection (1) lodge with the Registrar a copy of the resolution together with a copy of the report by the directors referred to in subsection (2).

(4) This section shall not apply where the issue of shares is pursuant to an offer for subscription to all existing members in proportion to their shareholdings, whether with or without the right to renounce in favour of other persons.

52. **Alteration of Share Capital** - (1) An international company may, by special resolution, alter the conditions of its memorandum and articles in any way, and in particular without limiting the generality of the foregoing, may do all or any of the following:

- (a)
 - (i) increase its share capital by the creation of new shares of such par value as it thinks expedient;
 - (ii) increase the number of its shares having no par value;
 - (iii) in the case of an international company with existing shares having no par value, add to its capital shares having a par value;
 - (iv) in the case of an international company with existing shares having no par value, add to its capital shares having a par value;
- (b) increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;
- (c) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares or consolidate and reduce the number of issued no par value shares;
- (d) increase the number of its issued no par value shares without an increase of its stated capital;
- (e) subdivide its shares or any of them into shares of smaller amounts than is fixed by the memorandum and articles provided always that in the subdivision the proportion between the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the redeemed share is derived;
- (f) convert all of its ordinary or preference share capital consisting of shares having a par value into

stated capital constituted by shares of no par value, subject to the provisions of this Act: Provided that an existing company may not so convert any share capital which is not fully paid up;

- (g) convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value, subject to the provisions of this Act;
- (h) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of the share capital by the amount of the shares so cancelled.
- (i) redenominate the currency of any shares by the conversion of shares denominated in one currency to the same number of shares of another currency; and
- (j) increase the par value of any shares by the capitalisation of profits.

(2) A cancellation of shares under subsection (1)(h) shall not be deemed to be a reduction of share capital within the meaning of this Act.

(2A) A redenomination of the currency of any shares under subsection (1)(i) shall be deemed not to effect a cancellation of the existing shares and the issue of fresh shares.

(3) Where under subsection (1) an international company -

- (a) has increased its shares capital beyond the capital stated in its memorandum by shares of a fixed amount, it shall within 28 days after the passing of the resolution authorising the increase cause to be lodged with the Registrar notice in the prescribed form of the increase; or
- (b) has increased the number of its shares of no par value, it shall within 28 days after the passing of the resolution authorising the increase, cause to be lodged with the Registrar a certificate given by the auditor of the company showing the value of each issued share arrived at by dividing the number of issued shares into the stated capital.

(4) If any international company fails to comply with the provisions of subsection (3), the company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Amended Act 1986-87/26; Act 1991/31]

53. **Validation of shares improperly issued** - Where an international company has purposed to issue or allot shares and the issue or allotment of those shares was invalid by reason of any provision of this Act or of the memorandum or articles of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Registrar may, upon application lodged with him by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable so to do, make an order validating the issue of allotment of those shares or confirming the terms of issue or allotment thereof or both subject to such conditions, if any, as he may impose and upon such order being made and a copy thereof being lodged by the company or by such holder, mortgagee or creditor with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of issue or allotment thereof as varied by the conditions, if any, imposed by the Registrar.

54. **Special resolution for reduction of share capital** - (1) Subject to confirmation by the Registrar, an international company may, if so authorised by its articles, by special resolution, reduce its share capital in any way and, in particular,

without limiting the generality of the foregoing, may do all or any of the following:

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

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

- (a) every creditor of the international company who, at the time fixed by the Registrar, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Registrar, unless satisfied by statutory declaration that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and the amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered;
- (c) where a creditor entered on the list whose debt is not discharged or whose claim has not been determined does not consent to the reduction, the Registrar may dispense with the consent of that creditor on the international company securing payment of his debt or claim by appropriating as the Registrar directs -
 - (i) if the company admits the full amount of the debt or claim or although not admitting it is willing to provide for it, the full amount of the debt or claim; or
 - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Registrar.

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

(4) All applications to the Registrar under the provisions of subsections (2) and (3) shall be lodged with the Registrar and the international company making such application shall bear the costs of any enquiry and advertisement directed by the Registrar under the provision of those subsections.

(5) The Registrar, if satisfied with respect to every creditor who under subsection (2) is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as he thinks fit and may by order require the international company to publish as the Registrar directs the reasons for reduction or such other information as the Registrar thinks expedient, and, if the Registrar thinks fit, the causes which led to the reduction.

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

(7) A copy of the order made by the Registrar confirming a resolution for reducing share capital shall be lodged by the international company with the Registrar together with the prescribed fee and on the filing of the copy of the order the reduction of share capital confirmed by that order shall take effect.

(8) A certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of an international company is as stated in that order.

(9) On the filing of the copy of an order the particulars shown in the order pursuant to subsection (6) shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Registrar to be made in the name of the international company shall, in the case of any addition to the same, for such period as is specified in the order of the Registrar, be deemed to be an alteration of the memorandum for the purposes of this Act.

(10) A member, past or present, shall not be liable in respect of any share, to any call or contribution exceeding in amount the difference between the amount of the share as fixed by the order and the amount paid, or the reduced amount which is to be deemed to have been paid, on the share, as the case maybe. Where any creditor entitled to object to the reduction is not entered on the list of creditors, by reason of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, and after the reduction the international company is unable to pay the amount of his debt or claim within 1 year after the debt or claim becomes due and payable or 1 year after the date of reduction whichever is the later then -

- (a) every person who was a member of that international company at the date of the registration of the order for reduction shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the date of the registration of the order for reduction; and
- (b) if that international company is wound up by the Court on an application by any such creditor, then upon proof of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, the Court may settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding-up,

but nothing in this subsection shall affect the rights of the contributories among themselves.

(11) Any officer of any international company who -

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

shall be guilty of an offence against this Act and shall be personally liable for the amount of such debt or claim.

54A. **Capital maintenance** - (1) Except insofar as this section otherwise provides, a capital return may be effected by any international company (whether or not the company may elect to alter its memorandum by reducing the amount of its share capital and its shares accordingly) and any capital return shall be a valid act of that company and shall be binding and enforceable against it if at the time of effecting the capital return, its directors have a reasonable belief that neither the effecting of that capital return nor (in the case of any capital return the performance of which is deferred) its

performance will result in the company being incapable of meeting its existing obligations to its existing creditors as they fall due.

(2) Any capital return, if it has the effect of returning assets to some but not all of the shareholders of the company (or to some but not all of the holders of any class of shares in the company) shall except insofar as it is effected in accordance with the rights of the members as stated or provided for in the Articles of the company, be deemed to be a variation of those rights to which the shareholders may object and the provisions of section 55 shall apply *mutatis mutandis* to such deemed variation. In the case of any variation or deemed variation not effected in accordance with the rights of the members as stated or provided for in the Articles, the company shall serve a copy of the return notice on every shareholder and any application under section 55 shall be lodged within 28 days after the date on which that notice was served or within such further time as the Registrar may allow.

(3) Where any capital return is effected otherwise than in accordance with the provisions of subsection (1) that capital return shall be void against a liquidator and any creditor of the company.

(4) Where an international company effects a capital return there shall be lodged with the Registrar for filing within 42 days of its having effected the capital return, or within such further time as the Registrar may allow, a return notice and if this section is not complied with in relation to the lodging of the return notice the capital return insofar as it effects a return of the capital of the company to any shareholder shall be void against any creditor of the company where-

- (a) that creditor can demonstrate that it has searched the register of the company and acted to its detriment in reliance on the particulars of the paid up capital of the company; and
- (b) the register contains no other document which might reasonably be supposed to have given notice of the fact that the assets of the company had been returned to or committed for return to any shareholder,

and such capital shall be paid by that shareholder (and if more than one by each pro rata) to the Registrar to such extent as shall be required to settle the liability of the company to that creditor and the Registrar shall forthwith pay that creditor notwithstanding the liquidation or insolvency of that company.

(5) Any capital return effected by an international company unable to pay its debts as they become due from its own money, if the company is wound up on a petition presented or of a notice lodged under section 169(1) within 3 months after its effecting the capital return shall be deemed fraudulent and void as against the liquidator of the company.

(6) Nothing in this section shall invalidate any transaction, arrangement or dealing entered into and performed in accordance with the provisions of sections 40, 50, or 51 nor any redemption of redeemable shares where the provisions of section 44 have been complied with nor any arrangement whereby at the time of subscription or purchase of shares assets are set aside in order to defease a future capital liability.

(7) Nothing in this section shall invalidate any transaction, arrangement or dealing entered into or performed by a company for the purposes or in connection with the purchase or subscription of its shares notwithstanding that the transaction, arrangement or dealing has or may have the consequence directly or otherwise of returning to its shareholders (or to any of them) a portion of its assets.

(8) Nothing in this section shall restrict the payment of dividends to any shareholder of an international company out of profits (including capital profits).

(9) In this section -

“capital return” means –

- (a) any transaction dealing or arrangement which has or may have the consequence directly or otherwise of

returning to the shareholders of an international company (or to any of them) a portion of its assets or of reducing any liability in respect of any share without effecting a reduction of its share capital in accordance with section 54;

- (b) any dividend paid by an international company otherwise than out of profits (including capital profits);
- (c) any sum of money, bonus issue, asset or property in specie of an international company paid distributed or allocated, otherwise than out of profits (including capital profits) to a shareholder in respect of that shareholder's shares;
- (d) any gift donation or wager made by an international company to or with its shareholders (or to or with any of them),

and a capital return shall be deemed to be effected upon the passing of the directors' resolution to that effect that capital return notwithstanding that performance thereof may be deferred;

"assets" includes all the assets of a company except its profits (including capital profits);

"existing creditor" means –

- (a) any person in favour of whom at the time the capital return was effected a charge was registered against the international company under Part IV of the Act;
- (b) any person engaged in trade or commercial activity to whom the international company in the ordinary course of its business owes any debt or similar obligation but does not include any person who may become a creditor after the effecting of the capital return;

"return notice" means a statutory declaration made by a director of the company and stating with reasonable accuracy the amounts by which the issued capital of the company has been or may be reduced as a result of the capital return.

[Added Act 1991/31; Amended Act 2004/14]

54B. **Capital maintenance exempt companies** - Where an international company issues a prospectus disclosing that it, or any other person or entity may or will purchase, repurchase or redeem any shares issued by the company or guarantee or defease any capital liability of the company, or otherwise benefit any member or person, then the rules of capital maintenance (including those contained in sections 44, 46, 52, 54 and 54A) shall not affect the validity or terms of any transaction entered into to achieve that objective.

[Added Act 1991/31]

54C. **Debts to be taken into account in determining solvency** - (1) Where this Act requires the directors of an international company to determine whether any act or omission shall result in the international company being incapable of meeting its obligations to its creditors as they fall due, the directors shall take into account:

- (a) all actual debts of the international company; and
- (b) such contingent debts of the international company which the directors honestly believe, on the balance of probabilities, will require a disposition of any economic benefit of the international company at any future time to satisfy those debts.

(2) Nothing in section 54B, as enacted by subsection (1) of this section, shall invalidate any transaction arrangement or dealing entered into or performed in accordance with subsection (6) of section 217 of the principal Act prior to the coming into force of this Act, nor shall anything in section 54B require the issue of a prospectus in respect of any such transaction, arrangement or dealing.

55. **Rights of holders of classes of shares -** (1) If the share capital of an international company is divided into difference classes of shares and provision is made by its articles for authorising the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares and, in pursuance of the said provisions, the rights attached to any class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 10 per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may lodge an application with the Registrar to have the variation or abrogation cancelled and if any such application is made, the variation or abrogation shall not have effect until confirmed by the Registrar on application lodged by the company in manner prescribed.

(2) An application shall not be invalid by reason of any applicant having consented to or voted in favour of the resolution for the variation or abrogation if the Registrar is satisfied that any relevant fact was not disclosed by the international company to that applicant before he so consented or voted and the applicant shall be deemed not to have consented to, or voted in favour of that resolution.

(3) The application shall be lodged within 28 days after the date on which consent was given or the resolution was passed or such further time as the Registrar allows, and the application shall be lodged in the first instance in writing in the prescribed form.

(4) After hearing the applicant and any other person who lodges an application with the Registrar to be heard and who appears to the Registrar to be interested, the Registrar may disallow or confirm the variation or abrogation as the case may be. The decision of the Registrar shall be final and he shall have a discretion as to how the costs and expenses of and incidental to such application shall be paid and may order accordingly.

(5) An international company shall within 28 days after the making of an order by the Registrar on any such application cause to be lodged with the Registrar a copy of the Registrar's order and if default is made in complying with this provision the international company and every officer of the company who is in default shall be guilty of an offence against this Act.

(6) The issue by an international company of preference shares ranking *pari passu* with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first mentioned shares was authorised by the terms of issue of existing preference shares or by the articles in force at the time the existing preference shares were issued.

(7) The issue of:

- (a) a Table B Debenture; or
- (b) shares carrying rights of forfeiture pursuant to section 43(3)(k),

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

[Added Act 1991/31]

56. **Rights of holders of Preference Shares to be set out in Articles** - (1) An international company shall not allot a preference share or convert an issued share into a preference share unless there is set out or provided for in its articles the rights of the holder of such a share with respect to the payment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other

shares or other classes of preference shares.

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

[Amended Act 1986-87/26]

Division 2 - Debentures

57. **Power to issue debentures** - (1) Subject to this Division and to the terms and conditions of its memorandum or articles, an international company shall have power to issue debentures on such terms and conditions as it thinks fit and in particular but without limiting the generality of the foregoing may issue debentures -

- (a) constituting a charge on any or all the assets of the company;
- (b) as bearer debentures;
- (c) convertible from bearer debentures to ordinary debentures;
- (d) convertible from debentures into shares in the company;
- (e) as Table B Debentures.

(2) The debt payable under any debenture whether sealed or signed on behalf of the company shall be a specialty debt of the company and where issued by a branch of a company shall be located at that branch.

(3) Every Table B Debenture issued by an international company so far as it does not exclude or modify the terms contained in Table B shall be deemed to have been issued upon the terms and conditions contained in Table B and the following provisions of this subsection shall be deemed to be issued subject to the terms contained in Table B and such Table B Debenture shall (subject always to the terms thereof) have the following effect:

- (a) the holders of such debentures shall have a right and power to vote and to demand a poll and thereby to determine all those matters in respect of which the members had the right and power to vote and to demand a poll before those rights and powers of the members became suspended or modified in accordance with the terms of the Table B Debenture;
- (b) every holder of such a debenture, or the trustee for any such holder, shall have one vote for each whole dollar, or its equivalent in any other currency, of the principal sum the subject of the debenture outstanding at the time when the votes are counted;
- (c) the holders of such debentures may cast their votes by proxy in writing without attending a meeting;
- (d) a statement of the name of the debenture holder except or where the debenture is a bearer debenture, the name of the custodian of that bearer debenture;
- (e) the memorandum and articles of the company may not be altered;
- (f) any provision in this Act or the articles of the company by which anything is required or permitted to be done by general meeting or by a resolution of the members shall be construed as requiring or permitting the same to be done by a resolution of those debenture holders in whom the right and

power to vote are for the time being vested, passed by such a majority of votes as would, if the votes were votes of members, be the majority necessary to pass the resolution;

- (g) subject to paragraph (d), notice of a meeting of those debenture holders, in whom the right and power to vote are for the time being vested shall be given to such debenture holders and their trustees, if any, in the same manner as notice of a meeting of members is required to be given to members;
- (h) unless it is otherwise provided by the terms of the debenture, the quorum for any meeting of the holders of such debentures shall be 2; and
- (i) upon the redemption of any such debenture the rights and powers referred to above of the holders of such debentures shall cease and determine;
- (j) the holder of a Table B Debenture shall not be deemed to be or to have been a member or a shareholder of an international company by reason only of the holding of such Table B Debenture or the exercise by him or on his behalf of any rights or powers or discretions pursuant to the terms of the Table B Debenture or the dealing in any way with the Table B Debenture.

(3A) Notwithstanding any other provision of this Act or any implication which apart from this subsection might arise or would arise at law or in equity, the holding or dealing with any Table B Debenture shall not impose or imply and shall be deemed (subject to any express provision contained in the terms of issue of any such debenture or arising as a necessary implication therefrom) never to have imposed or implied any duty on the part of the holder of the Table B Debenture to exercise any right or power or discretion contained in or arising out of or connected with the Table B Debenture for any particular purpose or to exercise any such right or power or discretion subject to any fiduciary or other like obligations whatsoever.

(4) Every Table B Debenture of an international company shall bear a serial number, shall be sealed or signed on behalf of the company or the branch of the company which issues it and shall contain -

- (a) the name of the company;
- (b) the date of issue of the debenture;
- (c) a statement of the quorum for meetings of debenture holders, which if it differs from that provided for in Table B shall be a sufficient statement of the exclusion of that part of Table B;
- (d) a statement of the name of the debenture holder except or where the debenture is a bearer debenture, the name of the Custodian of that bearer debenture;
- (e) a statement of the amount of principal (if any) for which such debenture is issued;
- (f) the date upon which such principal is due and payable, if not payable on demand;
- (g) the currency or currencies in which the principal and interest are payable; and
- h) the rate of interest, if any, per annum payable thereon.

(5) Where the provisions of this Act and of the articles of an international company which give the members of the company the right and power to vote and to demand a poll have been suspended or have otherwise been modified pursuant to the terms of a Table B Debenture, then (subject to there being no other unredeemed Table B Debenture

under the terms of which such provisions are to remain suspended) those provisions shall upon redemption of that Table B Debenture resume full force and effect in respect of that company in the same manner and to the same extent as before those provisions were suspended or were modified. Where such provisions resume full force and effect in any other circumstances, then in the absence of any provision to the contrary in the articles or in any relevant Table B Debenture they shall likewise resume full force and effect in the same manner and to the same extent as before those provisions were suspended or modified.

(6) Subject to the provisions of section 58(17) [and section 35A] any bearer debenture issued by an international company may be converted by the holder into an ordinary debenture unless the terms of the debenture or the articles as at the date of issue of the debenture by the company otherwise provide.

(7) Regulations may be made -

- (a) restricting the right of an international company or any particular class of companies to issue debentures which may be converted into shares; and
- (b) prescribing the terms and conditions or the event or events upon which conversion shall or may take place.

[Amended Act 1986-87/26; Act 1990/4; Act 2003/5]

58. **Company to maintain register of debentures** - (1) Subject to the provisions of this section, every international company which issues

Table B Debentures shall keep and maintain -

- (a) a register of Table B Debentures at the registered office of the company in the Cook Islands; and
- (b) a copy of all the terms of Table B Debentures issued by the company with the register of holders of Table B Debentures at that registered office,

and if the terms of a Table B Debenture incorporate in whole or in part the provisions of Table B of Schedule 2 or terms provided for in the articles of association of the company or prescribed as being the form which may or shall be adopted in a particular case, the copy of the terms kept with the register may disclose such terms by reference to that Table or regulation or those articles.

(2) Where any register of debentures (Table B or otherwise) issued by an international company is kept by that company, then that register shall, except when lawfully closed, be open to the inspection of every registered holder of shares and every holder of registered debentures in that company and shall contain in the case of ordinary debentures particulars of the names and addresses of the debenture holders and of the number of debentures held by each of them.

(3) For the purposes of this section, a register of debentures shall be deemed to be lawfully closed in accordance with the provisions contained in the articles or in the debentures or debenture stock certificates or in the trust deeds or other documents relating to or securing the debentures during such periods, not exceeding in the aggregate 30 days in any calendar year, as are therein specified.

(4) Every holder of registered debentures issued by an international company and every holder of shares in an international company shall, at his request, be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof on payment of the sum of \$5, but the copy need not include any particulars as to any registered debenture holder other than his name and address and the debentures held by him.

(5) A copy of any trust deed relating to or securing any issue of debentures by an international company shall be forwarded by the company to a holder of those debentures at his request on payment of the sum of \$5 or such lesser sum as is fixed by the company.

(6) If inspection is refused, or a copy is refused or not forwarded within a reasonable time being not more than 42 days, after a request has been made to an international company pursuant to this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(7) An international company may cause to be kept in place outside the Cook Islands a branch register of debentures.

(8) An international company which keeps such a branch register shall lodge with the Registrar notice of the situation of the office where the branch register of debentures is kept and of any change in its situation and, if it is discontinued, of its discontinuance, and any such notice shall be lodged with 1 month after the opening of the office or of the change or discontinuance, as the case may be.

(9) A branch register of an international company shall be kept in the same manner in which the principal register is by this Act required to be kept.

(10) An international company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company or to the principal register.

(11) Where a debenture is registered on a branch register, the debenture and all rights arising therefrom shall be situated in the place where it is registered and unless otherwise expressed in the debenture, the principal and interest is payable in the money of the place of registration calculated at the exchange rate as noon on the date on which it becomes due and payable.

(12) An international company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as practicable after the entry is made, and shall cause to be kept at that office duly entered up from time to time a duplicate of its branch register.

(13) A debenture registered in a branch register may be distinguished from a debenture registered in the principal register.

(14) The costs of maintaining branch registers shall, unless the debenture otherwise provides, be borne ratably according to the number of debentures registered thereon by the holders of those debentures.

(15) No debenture holder may transfer a debenture issued by an international company from one register to another but the company may transfer a debenture from one register to another. Any international company wishing to so transfer a debenture shall first obtain the written consent of the debenture holder to such transfer (provided that the company shall not be obliged to obtain such consent from the holder for the time being of a bearer debenture unless the holder shall in writing have advised the company of his address for notice), which consent shall not be unreasonably withheld.

(16) Every international company which has issued Table B Debentures shall, until every such debenture has been redeemed and cancelled, lodge with the Registrar at least once in every calendar year a return of Table B Debentures setting out the prescribed particulars.

(17) Any Table B Debenture issued to bearer may be converted to an ordinary debenture and, in the absence of any provision to the contrary contained in that debenture or in the articles as at the date of issue of that debenture, then

the conversion shall be effected in the following manner:

- (a) a photographic copy of the bearer debenture or the negotiable documents in respect of the same, as the case may be, shall be delivered to the registered office of the company in the Cook Islands together with a direction as to the name and address of the person who is to be recorded as the holder of the debenture;
- (b) thereupon the directors of the company shall resolve to record on the register the person so named as the holder of the debenture;
- (c) recording pursuant to such a resolution shall be undertaken upon receipt by the company of the original bearer debenture or the negotiable documents in respect of the same, as the case may be, within the time specified in paragraph (e) and shall have effect as from the date of the directors' resolution.
- (d) upon the resolution of the directors referred to in paragraph (b), the original bearer debenture shall cease to be a security of the company but in the event of the same or the negotiable documents in respect of the same, as the case may be, not being received within the time specified in paragraph (e), the original bearer debenture shall become a security of the company once more ranking from the original date of issue;
- (e) upon the original bearer debenture or the negotiable document in respect of the same, as the case may be, being received by the company for cancellation within 1 month of the passing of the resolution, the company shall issue a certificate to the person entitled thereto in respect of the ordinary debenture into which the bearer debenture has been converted; and
- (f) should the original bearer debenture or the negotiable documents in respect of the same, as the case maybe, not be received by the company for cancellation within 1 month of the passing of the resolution, the original bearer debenture shall be deemed to have remained as a security and the resolution for recording and any recording in respect of the conversion shall be deemed to be cancelled.

(18) An international company shall be responsible for any loss incurred by any person by reason of the company recording in its register of debentures the name of the holder of any bearer debenture without the original bearer debenture or the negotiable documents in respect of the same, as the case may be, being surrendered to that company and cancelled prior to the contemporaneously with that entry.

(19) Upon the surrender to an international company of a registered debenture, the company shall enter in the appropriate register of debentures the fact and date of its surrender.

[Amended Act 1986-87/26; Act 1990/4]

59. **Perpetual debentures** - (1) A condition contained in a debenture or in a deed for securing a debenture shall not be invalid by reason only that the debenture is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.

(2) Subject to subsection (3), notwithstanding anything in any debenture or trust deed, the security for a debenture issued by an international company which is irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable forthwith or at such other time as the Court directs if, on the

application of the trustee for the holder of the debenture or, where there is no trustee, on the application of the holder of the debenture, the Court is satisfied that -

- (a) at the time of the issue of the debenture, the assets of the international company which constituted or were intended to constitute the security therefor were sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60 per centum of the principal sum of moneys outstanding, regard being had to all prior charges and charges ranking *pari passu*, if any; and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern, after allowing a reasonable amount for depreciation, are worth less than the principal sum and the international company is not making sufficient profit to pay the interest due on the principal sum or, where no definite rate of interest is payable, interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(3) Subsection (2) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of a debenture or the relevant trust deed or under a compromise or arrangement between the international company and its creditors.

[Amended Act 1986-87/26]

60. **Reissue of redeemed debentures** - (1) Where an international company has redeemed any debentures -

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

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

(2) After the reissue, the person entitled to the debenture shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where an international company has deposited any of its debentures to secure advances on current accounts or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt while the debentures remain so deposited.

[Amended Act 1986-87/26]

Division 3 - Title and transfers

61. **Nature of shares** - The shares of a member in an international company shall be personal estate, transferable in the manner provided by the articles, and shall not be of the nature of real estate.

62. *[Repealed by 1991 no. 31]*

63. **Register of members to be evidence of title** - (1) Subject to section 109, the entry of the name of a person in the register of members kept pursuant to section 105 as the holder of a share, is prima facie evidence that legal title to the share vests in that person as registered holder.

(2) A company may 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.

(3) The registered holder of a share in an international company may in writing apply to the company for a certificate relating to some or all of the shareholder's shares in the international company.

(4) On receipt of the application for a share certificate under subsection (3) 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 the authority under which the company is constituted;
 - (ii) the address of the registered office of the company in the Cook Islands or, where the certificated is issued by a branch of the company, the address of that branch;
 - (iii) where the shares have a par value, the nominal value and the extent to which the shares are paid up;
 - (iv) the class of the shares;
 - (v) the number of shares to which the certificate relates.

(5) Notwithstanding section 66, where a share certificate has been issued, a transfer of the shares to which it relates shall not be registered by the company unless the form of transfer required by that section is accompanied by the share certificate relating to the share or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the directors.

(6) 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 on the application of the transferee or at the discretion of the directors.

(7) If default is made in complying with subsection (4), the company and every officer of the company who is in default shall be guilty of an offence against this Act.”

[Amended Act 2006/3]

64. **Company may have Share Seal** - An international company may, if authorised by its articles, have a seal which shall have on its face the name of the company and the words "Share Seal" and a share certificate under such seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

65. **Loss or destruction of Certificate** - (1) Subject to subsection (2), where a certificate or other document of title of shares or debentures other than bearer shares or debentures is lost or destroyed, the international company issuing the share or debenture shall, on payment of a fee prescribed by regulation, issue a duplicate certificate document in lieu thereof to the owner on his application accompanied by evidence as to its loss or destruction and if required, an indemnity in a form required by the directors.

(2) The directors of an international company, before accepting an application for the issue of a duplicate certificate or document, may require the applicant -

- (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate has been lost or destroyed and that the owner intends after the expiration of 28 days after the publication of the advertisement to apply to the company for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both those things.

(3) In the case of bearer share warrants, duplicate warrants shall be issued only in accordance with the provisions of the articles.

(4) In the case of bearer debentures, duplicate certificates shall be issued only in accordance with the terms of issue of the debenture which has been lost or destroyed.

[Amended Act 2006/3]

66. **Instrument of transfer** - (1) Except in the case of share warrants, bearer shares or debentures, an international company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(2) Although a personal representative is not himself a member of the company or holder of a debenture or other interest, a transfer of the share, debenture or other interest of a deceased person made by his personal representative shall be as valid as if he had been such a member or holder at the time of the execution of the instrument of transfer.

(3) Bearer shares and share warrants issued to bearer shall be transferable in the manner described in [sections 35, 35A and 36], respectively.

(4) Bearer debentures shall be transferable in accordance with the provisions in section 35A and any provisions in any trust deed or terms of issue relating thereto.

(5) An international company may refuse to register a transfer of a share or debenture of a deceased person otherwise than by a personal representative of that person who has taken out or obtained probate or letters of administration of the estate of the deceased person.

[Amended Act 1991/31; 2003/5]

67. **Official Register** - (1) The Registrar shall establish a register to be known as the Official Register.

(2) A member of an international company may lodge with the Registrar for registration a share warrant, accompanied by a request in the prescribed form.

(3) The Registrar shall number serially in order of lodgement all requests received under the provisions of this section.

(4) The Registrar shall enter in the Official Register -

- (a) the serial number of the request;
- (b) the name of the international company;
- (c) the numbers of the shares and the class, if any, or description thereof;
- (d) the name of the owner thereof as set forth in the request;
- (e) the date upon which the request was lodged and the time of its lodgement;
- (f) the name and address of any person to whom a certificate as to the contents of the register in respect of that entry may be given; and
- (g) the name and address of the applicant.

(5) Upon making an entry in the Official Register, the Registrar shall cause the share warrant lodged for registration to be marked with the fact and date of entry and with the registered number and return the same to the person lodging it, or as he directs.

(6) As against the owner of a share warrant marked under the provisions of subsection (5), the details in the Official Register shall be conclusive evidence of the ownership thereof but entry shall not confer any priority on such equitable interest over other interests to which it was subject or over charges imposed by the law of the Cook Islands.

(7) Upon application by or on behalf of any person whose name is entered in the Official Register under subsection (4)(f) or (g) or, in the case of that person's death or incapacity, of his personal representatives, the Registrar shall issue to the applicant or the person making the application on his behalf a certificate of the particulars registered relating to such entry.

(8) Upon an application in the form prescribed being lodged by the owner named in the Official Register or by his personal representative, accompanied by the prescribed fee and by the share warrant, the entry thereof may be cancelled and the Registrar shall thereupon enter in the Official Register the date of cancellation and endorse on the warrant the fact of cancellation of the entry.

[Amended Act 2003/5]

68. **Registration of transfer at request of transferor** - (1) On the request in writing of a transferor of a share or debenture, other than a share warrant, bearer share or debenture, in an international company -

- (a) the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee; and
- (b) the company shall by notice in writing require the person having possession, custody or control of any share certificate or debenture and the instrument of transfer thereof or either of them to post or deliver it or them to the registered office of the company in the Cook Islands within a stated period, being not less than 14 and not more than 42 days after the date of the notice, to have any such share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(2) If any person refuses or neglects to comply with the notice given under subsection (1), the transferor may lodge an application with the Registrar to issue a notice to that person to show cause why the documents mentioned in

the notice should not be delivered up or produced as required by the notice.

(3) Regulations may be made providing for the issue of a new certificate, the cancellation of the old certificate and otherwise for regulating the rights of all persons in respect of the documents the subject of such notice.

[Amended Act 1991/31; Act 2006/3]

69. **Notice of refusal to register transfers** - (1) If an international company refuses to register a transfer of any share, debenture or other interest in the company, it shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section the international company and every officer of the company who is in default is guilty of an offence against this Act.

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

(2) Where any certification by an international company is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud or wilful default or wilful neglect, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

(3) For the purposes of this section -

- (a) an instrument of transfer shall be deemed to be certified if it bears the words "Certificate Lodged" or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company if -
 - (i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the company's behalf; and
 - (ii) the certificate is signed by a person authorised to certify transfers on the company's behalf or by any officer either of the company or of a company so authorised; and
- (c) a certificate that purports to be authenticated by a person's signature or initials, whether handwritten or not, shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.

71. **Duties of Company With Respect to Issue of Certificate** - (1) Other than such a transfer as the company is for any reason entitled to refuse to register and does not register, every International Company, within 2 months after the issue of any shares or debentures, and within 1 month after the date on which a transfer of any share or debenture is lodged, shall except as provided by this Act, complete and have ready for delivery the appropriate certificate, warrant or debenture in connection with the issue or transfer, unless the conditions of issue or transfer otherwise provide.

(2) If any international company on which a notice has been served requiring the company to make good any default in complying with the provisions of this section fails to make good the default within 21 days after the service of the notice, the Registrar may on the application of the person entitled to have any certificate or warrant for the debentures delivered to him make an order directing the company and every officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs and expenses of and incidental to the application shall be borne by the company and by any officer of the company in default in such proportions as the Registrar thinks fit.

(3) If default is made in complying with this section, the international company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Amended Act 2006/3]

Division 4 - Registration of charges

72. **Filing of charges** - (1) Subject to this Division, where a charge to which this section applies is created by an international company, the company or any other person interested in the charge may cause to be lodged with the Registrar for filing within 42 days after the creation of the charge -

- (a) a copy of the instrument, if any, by which the charge is created or evidenced; or
- (b) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of the chargees or persons entitled to the benefit thereof.

(1A) Where any charge to which the section applies is not filed with the Registrar pursuant to subsection (1), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

(2) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the moneys secured by a charge and, when a charge becomes void under this section, the moneys owing thereunder shall immediately become payable.

(3) The charges to which this section applies are all charges (including any charge securing a contingent debt or obligation) whether fixed or floating on any asset of an international company.

(4) Where a charge created in the Cook Islands affects property outside the Cook Islands the instrument creating or purporting to create a charge or a copy thereof accompanied by the verifying statutory declaration may be lodged for filing under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual accordingly to the law of the place in which the property is situated.

(5) When a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled equally is created by an international company, it shall be sufficient if there is lodged with the Registrar within 42 days after the execution of the instrument creating the charge, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following particulars -

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

- (b) the date of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders,

together with -

- (e) the instrument creating the charge; or
- (f) a copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy.

(6) For the purposes of subsection (5) where more than 1 issue is made of debentures in the series, there may be lodged with the Registrar within 42 days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.

- (7) Where a charge requiring registration under this section is created before the lapse of 42 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of the debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as it relates to the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Registrar that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

[Amended Act 1991/31]

73. **Filing of pre-existing charges** - (1) Where an international company acquires any property which is subject to a charge of any such kind as may, if it had been created by the company after acquisition of the property, have been filed under this Division, the company or any other person interested in the charge may cause:

- (a) a copy of the instrument, if any, by which the charge is created or evidenced; or
- (b) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, the names of the chargees or persons entitled to the benefit thereof,

to be lodged with the Registrar for filing within 42 days after the date on which the acquisition is effected.

(2) Where any charge to which this section applies is not filed with the Registrar pursuant to subsection (1), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

[Amended Act 1991/31]

74. **Filing of charges by foreign companies which become registered under this Act** - (1) This section applies to charges by foreign companies in respect of property situated in the Cook Islands if:

- (a) the foreign company creates the charge whilst registered under Part X;
- (b) the foreign company has previously created the charge prior to registration, but subsequently registers under Part X.

(2) In respect of such a charge:

- (a) the company or any other person interested in the charge may cause:
 - (i) a copy of the instrument, if any, by which the charge is created or evidenced; or
 - (ii) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of the chargees or persons entitled to the benefit thereof,

to be lodged with the Registrar for filing within 42 days after the date on which the charge was created where the charge was created whilst the foreign company was registered under Part X, and within 42 days after the registration of the foreign company under Part X where the charge was created prior to registration under Part X; and

- (b) the company shall give notice in writing to all other persons interested in the charge of the fact of the registration of the company under Part X of this Act together with a copy of this section, and such notice shall be given to such persons within 15 days of the registration of the company under Part X where the charge was created prior to the registration and within 15 days of the creation of the charge where the charge was created after the registration.

(3) Where, in relation to any charge to which this section applies:-

- (a) notice has been given to all persons interested in the charge pursuant to paragraph (b) of subsection (1); and
- (b) the charge is not filed with the Registrar pursuant to paragraph (a) of subsection (1), the charge shall, so far as any security on the company's property is conferred thereby, and without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

(4) Where, in relation to any charge to which this section applies, notice is not given to all persons interested in the charge pursuant to paragraph (b) of subsection (1), the company and every officer in default shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding \$50,000.

(5) Nothing in this section shall render void any charge to which this section applies where notice has not been given by the company to all other persons interested in the charge pursuant to paragraph (b) of subsection (1).

[Amended Act 1991/31]

74A. **Negation of the rule in Re Charged Card Services Limited and Broad v Commissioner of Stamp Duties**

- (1) Notwithstanding any rule of law to the contrary, any charge or security given, or purported to be given, by any person ("the charger") in favour of another person, ("the chargee") where:

- (a) the charged property is or includes a debt due or to become due to the chargor from the chargee; and
- (b) which debt is situated in the Cook Islands shall be deemed to be a charge over an asset and shall be as valid and enforceable to the same extent as if the charge or security had been given over that debt in favour of any other person.

(2) For the purpose of subsection (1) of this section, a debt shall be deemed to be situated in the Cook Islands if either:

- (a) the chargor is an international company; or
- (b) the chargee is an international company and
 - (i) the contract or deed evidencing the debt has been entered into (by one or all of the parties) in the Cook Islands; or
 - (ii) the contract or deed evidencing the debt is, or is to be, given effect to (whether in whole or in part) in the Cook Islands.

(3) Nothing in this section shall be construed in any way to limit the validity or effect of:

- (a) any contractual, legal or equitable right of set off arising between the parties (including any right of a bank and the rules relating to matters of account between parties); or
- (b) any provisions creating other rights, powers, obligations (or the imposition of restrictions or obligations) between a debtor and a creditor;

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

(4) For the purposes of this section any reference to a debt becoming due includes a reference to:

- (a) a credit balance of an account (whether or not ascertained at any particular time);
- (b) a contingent claim;
- (c) proceeds and receivables due from time.

[Added Act 1990/4]

75. **Register of charges to be kept by Registrar** - (1) The Registrar shall keep a register of all the charges lodged for filing under this Division and shall enter in the register with respect to those charges the following particulars -

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 72(5); and
- (b) in the case of any other charge -
 - (i) if the charge is a charge created by an international company, the date of its creation and, if

the charge was a charge existing on property acquired by an international company the date of the acquisition of the property;

- (ii) the amount secured by the charge;
- (iii) a description sufficient to identify the property charged; and
- (iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a certificate of every charge filed stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to filing have been complied with.

76. **Endorsement of certificate of registration on debentures** - (1) An international company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock, which is issued by the company and the payment of which is secured by a charge so registered -

- (a) a copy of the certificate of filing; or
- (b) a statement that filing has been effected and the date of filing.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock issued by an international company before the charge was filed.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section is guilty of an offence against this Act.

77. **Filing of satisfaction and release or property from charge** - (1) Where, with respect to a registered charge created by an international company -

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking,

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

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

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

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

80. **Application for Division** - (1) A reference in this Division to an international company shall be read as including a reference to a foreign company registered under this Act, but nothing in this Division applies to a charge of a foreign company on property outside the Cook Islands.

(2) Nothing in this Division shall require a foreign company to file any charge until the foreign company is registered under Part X of this Act.

[Amended Act 1991/31]

PART V

MANAGEMENT AND ADMINISTRATION

Division 1 - Office and name

81. **Registered office of company** - (1) Every international company shall have a registered office in the Cook Islands, which office shall be the principal office of a trustee company.

(2) Trustee companies shall display at their principal office the names of such international companies as have their registered office at that address.

82. **Publication of name** - The name of an international company shall appear in legible characters on -

- (a) its seal; and
- (b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, receipts and letters of credit or of purporting to be issued or signed by or on behalf of the company,

and, if default is made in complying with this subsection, the company is guilty of an offence against this Act.

[(2) Repealed]

[Amended Act 1991/31]

Division 2 - Directors and officers

83. **Directors** - (1) A trustee company shall, where required by this Act or when requested in writing by an international company so to do, make available an officer of the trustee company for appointment as a resident director of an international company.

(2) No person shall act or be appointed as a resident director of an international company other than an officer of a trustee company made available for appointment by the trustee company pursuant to subsection (1).

(3) Every international company shall have at least one director, who may be a resident director, and any casual vacancy in directors may, so far as the articles do not otherwise provide, be filled by a person appointed by the

continuing director or directors or, if there be none, by the Registrar on a request being made by a member of the company.

(4) A director may be a company which may act by itself or through a nominee appointed in writing but a company other than a trustee company shall not be appointed or act as a director of more than one other company.

(5) A resident director shall not be subject to retirement but he may, upon agreement between the trustee company which makes available the officer for appointment and the international company of which the resident is appointed a director, be replaced by another officer of the trustee company at any time.

(6) A resident director shall be entitled to vote upon the resolution of the board of directors without disclosing his interest as a director of any other international company.

(7) Notice received by a resident director of an international company shall not be deemed notice to that company unless it is given to the resident director specifically as notice to that company.

(8) A resident director for an international company shall not disclose or use information he has obtained by reason of his office to any person or for any purpose except in accordance with his duty as a director of the company and so far as he may be compelled by law so to do. The resident director may disclose to an appropriate public officer in the Cook Islands or otherwise use within the Cook Islands only information coming to his knowledge which he honestly believes suggests that a fraud is being or is likely to be practiced by the company or by any of its members or directors or upon the company or any of its members.

(9) Any person acting in contravention of the provisions of this Act relating to disclosure by a resident director shall be guilty of an offence against this Act.

(10) The fees of a resident director payable by an international company shall be paid to the trustee company which made available the officer for appointment in the Cook Islands in such manner and at such times as shall be agreed between the trustee company and the company and shall be a charge upon the assets of the company ranking in priority next after fees owing by the company to the Registrar.

[(11) Repealed]
[Amended Act 1991/31]

84. **Restrictions on naming** - A person shall not be named as a director or proposed director in the articles of the company or in a prospectus under Part XII unless before the registration of the articles or the issue of the prospectus he has, by himself or by his agent authorised in writing for the purpose, signed and caused to be lodged with the Registrar a consent in writing to act as a director.

85. **Qualification of director** - (1) Every director who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within 2 months after his appointment or such shorter period as is fixed by the articles.

(2) Unless otherwise provided by the articles, the qualification of any director of an international company must be held by him solely and not as one of several joint holders.

(3) A resident director shall not be required to hold qualification shares notwithstanding anything contained in the articles.

(4) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his

qualification or if after so obtaining it he ceases at any time to hold his qualifications.

(5) A person vacating office under this section shall be incapable of being re-appointed as director until he has obtained his qualification.

86. **Validity of acts of directors** - The act of a director or manager or secretary shall be valid notwithstanding any defect that may be discovered in his appointment or qualification.

87. **Power to Restrain Certain Persons from Managing Companies** - (1) The Registrar may order that a person who, in the Cook Islands or elsewhere -

- (a) has been convicted of an offence in connection with the promotion, formation or management of a corporation or company;
- (b) has been convicted of any acts involving fraud or dishonesty; or
- (c) is an undischarged bankrupt or insolvent,

be disqualified from acting as a director or promoter of, or being in any way directly or indirectly concerned with, or taking part in the management of, an international company.

(2) An international company shall not thereafter be entitled to appoint or retain a person so disqualified as a director and a person so disqualified who acts in contravention of that order, without leave of the Court first had and obtained, as a director or promoter of, or is in any way, whether directly or indirectly, concerned or takes part in the management of, an international company shall be guilty of an offence against this Act.

88. **Disclosure of Interests in Contracts, Property, Offices etc.** - (1) Subject to this section, every director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the company or cause to be circulated in writing to all the other directors particulars of his interest.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director of an international company consists only in being a member or creditor of another international company which is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3) For the purpose of this section a resident director shall be deemed to be interested in all contracts or proposed contracts with any international company of which he is a director and to have given notice thereof to all the other directors and to have declared the nature of his interest and to have given particulars thereof in accordance with the provisions of subsection (1).

(4) Subject to any contrary provision in the articles of an international company, a director of the company shall not, for the purposes of this section, be deemed to be interested in or to have at any time been interested in, a contract or proposed contract, by reason only that the contract or proposed contract -

- (a) has been or will be made with; or
- (b) is for the benefit of; or

(c) is on behalf of,

a company which, by virtue of the provisions of section 4(5) is deemed to be a related company, and that he is also a director of that company.

(5) For the purposes of subsection (1), a general notice given to the directors of an international company by a director to the effect that he is an officer or a member of a specified international company or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure it is brought up and read at the next meeting of the directors after it is given.

(6) Where the articles of an international company so require, every director of that company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director, shall declare at a meeting of the directors of the company or cause to be circulated in writing to the other directors the fact and the nature, character and extent of the conflict but the provisions of this subsection shall not apply to a resident director.

(7) The declaration shall be made at the first meeting of the directors held -

- (a) after he becomes a director; or
- (b) if already a director, after he commences to hold the office or to possess the property, as the case requires,

whether or not it has been already circulated in writing.

(8) Every declaration under this section shall be recorded in the minutes of the meeting at which it was made.

(9) Where:

- (a) any contract is entered into in contravention of this section; and
- (b) any party to that contract cannot establish on the balance of probabilities that he did not have actual knowledge or suspect at the time of entering the contract that the contract was entered into by any other party in contravention of this section,

then the contract shall be voidable at the absolute discretion of the company as against that party and all of the profits earned or derived by that party from the contract shall be payable to the company together with such other compensation as a Court may think just in the circumstances.

[(10) Repealed]

[Amended Act 1991/31]

89. **Code for the establishment of liabilities of officers** - (1) An officer of an international company shall at all times act for a proper purpose and honestly.

(2) An officer of an international company shall not make improper use of his position as an officer to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the international company.

(3) An officer of an international company is obliged to use such diligence as might reasonably be expected of a person of his knowledge and experience in the performance of his duties as such an officer, having regard to the requirements and business activities of the international company.

(4) Nothing in this section shall preclude -

- (a) the right an international company to impose, in its articles or by contract, obligations and duties on its officers in addition to the obligations and duties imposed in this section;
- (b) the right of the members of an international company to ratify by special resolution the conduct of the officers notwithstanding that any such conduct may contravene this section or the memorandum and articles; and
- (c) an international company entering into a contract of insurance or indemnity or any other similar contractual obligation with or for the benefit of any officer.

(5) Notwithstanding that the obligations and duties of the officers of an international company are owed to the company, the company and any other person affected by any breach of those duties and liabilities may commence any civil proceedings against the officers: Provided that, in the case of any proceedings commenced by any person other than the company such proceedings shall be commenced only with the leave of the court and only if:

- (a) the Court is satisfied that a strong prima facie case exists against the officers; and
- (b) the person commencing the proceedings pays into Court such amount determined by the Court as security for the costs and expenses of any other party to the proceedings;

and any net financial benefit derived from such proceedings shall be payable to or otherwise applied in favour of the company.

(6) Subject to subsection (4), this Division constitutes a codification of the duties and obligations of officers of international companies and no further duties or obligations to any persons (including the creditors of the international company) shall be created, expressly or by implication, by any rule of common law or equity; save that nothing herein shall preclude the Court from referring to the rules of common law or equity to assist in interpreting the provisions of this section.

89A. **Limitations of liability of officers** - (1) Notwithstanding any other provision of this Act, no relevant person shall in the performance of any obligations, duties, services or other activities for or on behalf of an international company:

- (a) be liable for any penalty under this Act other than where such penalty arises by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person;
- (b) incur any tortious liability arising otherwise than by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person, unless the articles of the company provide for such liability;
- (c) be liable for any breach of trust or other equitable obligation other than where the relevant person had actual knowledge of and knowingly assisted in such breach, unless the articles of the company provided for such liability;
- (d) shall in the absence of wilful misconduct, wilful default or wilful neglect, incur any liability (whether

tortious, contractual, equitable or otherwise) by reason only that the company incurs any debts or obligations or continues to carry on business at a time when the company is unable to meet its obligations to its creditors as they fall due.

(2) For the purposes of paragraph (c) of subsection (1) no inference shall be made as to the knowledge of a relevant person by reason of any failure to make inquiries in relation to the activities of the company or the source of any of the funds or assets received by the company or by reason of upholding any obligation as to confidentiality provided by this Act.

(3) For the purposes of this section "relevant person" means:

- (a) a resident director;
- (b) a resident secretary;
- (c) a trustee company, a subsidiary of a trustee company and any officer thereof;
- (d) a nominee or representative of any of the persons referred to in (a), (b) or (c) hereof;
- (e) any person acting on the instructions or under the authority (whether general or specific) of any of the persons referred to in (a), (b) or (c) hereof.

[Added Act 1991/31]

90. **Secretary** - (1) When requested in writing by an international company to make available a resident secretary a trustee company shall either accept appointment as resident secretary of that company or make available for appointment an officer of the trustee company.

(2) No person shall act or be appointed as a resident secretary other than a trustee company or an officer of a trustee company made available for appointment by the trustee company pursuant to subsection (1).

(3) Every international company shall have one or more secretaries, one of whom shall be a resident secretary.

(4) Subject to subsection (5), the resident secretary of an international company shall be responsible for compliance by the company with the requirement of this Act in relation to the lodging of all documents with the Registrar, the maintenance of the company's records at the registered office of the company and dealing with communications addressed to the company at its registered office.

(5) Notwithstanding any other provision of this Act to the contrary, the resident secretary shall not be liable as an officer of the company for any penalty provided for in this Act save for anything done or omitted to be done by him in the carrying out of his office nor for any damage caused to or suffered by any person or company howsoever arising otherwise than by reason of his wilful misconduct, wilful default or wilful neglect.

(6) An officer of a trustee company appointed pursuant to subsection (1) shall be entitled of his own motion to obtain the assistance of the trustee company of which he is an officer, or a barrister or a solicitor, in the interpretation of this Act and in the making and completion of reports, returns and documents and shall be entitled by himself or his agent to have access to such information as is required to make and complete the same and to furnish such information relating to the affairs of the company to the trustee company or a barrister or a solicitor for that purpose.

(7) An international company shall forthwith pay any costs, charges and expenses incurred on its behalf by the

resident secretary of the company in respect of any matters required or permitted by him to be done under this Act.

(8) The remuneration of a resident secretary of an international company shall be fixed by agreement between the company and the trustee company which is, or has provided the officer who is, the resident secretary. That remuneration shall be paid in the Cook Islands in such manner and at such time as shall be agreed between the trustee company and the company and such remuneration shall be a charge upon the assets of the company ranking in priority next after the fees owing by the company to the Registrar.

(9) Every secretary of an international company shall be appointed by the directors of the company.

(10) If the resident secretary of an international company has reasonable cause to believe that a fraud is being or might be practiced by the company or by any of its members or directors he shall be entitled to report thereon to the Registrar.

[Amended Act 1989/22]

91. **Register of Directors and secretaries** - (1) Every international company shall keep at its registered office in the Cook Islands a register of its directors, resident directors and secretaries.

(2) The register shall contain with respect to each director and resident director -

- (a) in the case of an individual, his present surname and any former surname and his present other names and any former other names and his usual residential address; and
- (b) in the case of a company, its company name and the address of its registered office in the Cook Islands.

(3) The register shall contain with respect to each secretary -

- (a) in the case of an individual, his present surname and any former surname and his present other names and any former other names and his usual residential address; and
- (b) in the case of a company, its company name and the address of its registered office in the Cook Islands.

(4) The register kept by an international company shall be open to the inspection of any director, member and auditor of the company without charge.

(5) An international company shall lodge with the Registrar -

- (a) within 1 month after incorporation, a return in the prescribed form containing in relation to its directors, resident directors and secretaries the particulars set out in subsection (2) and (3);
- (b) within 1 month after a person named in a return ceased to be a director, a resident director or secretary of the company, a return in the prescribed form notifying the Registrar of the change and containing with respect of each then director, resident director and secretary of the company the particulars set out in subsections (2) and (3) and the date of cessation; and
- (c) within 1 month after a person becomes a director, resident director or secretary of the company, a return in the prescribed form notifying the Registrar of that fact and containing the particulars set out

in subsections (2) and (3) and the date of appointment.

(6) If default is made by an international company in complying with any provision of this section, the company and every officer of the company who is knowingly in default is guilty of an offence against this Act.

(7) A certificate of the Registrar stating that from any return lodged with the Registrar pursuant to this section it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified international company shall, in all Courts and by all persons having power to take evidence for the purposes of this Act, be received as prima facie evidence of the facts stated therein and for the purposes of this subsection a person who appears from any return so lodged to be a director, manager or secretary of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he has ceased to be such a director, manager or secretary.

Division 3 - Meetings and proceedings

92. **Annual general meeting** - (1) Every international company, at such times as are in this section prescribed, shall in addition

to any other meetings hold general meetings to be called and described in the notices calling such meetings as "annual general meetings" of that company, and those meetings shall be held -

- (a) in the case of the first such meeting within a period of 18 months after the date of the incorporation of the company concerned; and
- (b) thereafter within not more than 6 months after the end of every ensuing financial year of the company; and
- (c) within not more than 15 months after the date of the last preceding such meeting of that company.

(2) The annual general meeting of an international company shall deal with and dispose of the matters prescribed by this Act and may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to the provisions of this Act, any matter capable of being dealt with by any general meeting of the company.

(3) The Registrar may, on application made by an international company in accordance with a resolution of the directors and signed by a director or secretary, and on good cause shown, subject to such conditions as the Registrar thinks fit, extend that period not exceeding 6 months, but notwithstanding any such extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted shall be determined as if such meeting had been held on the last day on which it should have been held if the extension had not been granted.

(4) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(5) If default is made in holding an annual general meeting under this section or in complying with any conditions of the Registrar under subsection (3) -

- (a) the international company and every officer of the company who is in default shall be guilty of an offence against this Act; and
- (b) the Court may on the application of any member order a general meeting to be called.

(6) Notwithstanding any other provision of this Act, an international company need not -

- (a) hold any particular annual general meeting if all members entitled to attend that meeting agree thereto in writing, and in such event a resolution in writing dealing with -
 - (i) the matters required by this Act to be dealt with and disposed of at any annual general meeting of an international company; and
 - (ii) such other matters, if any, as may in terms of subsection (2) be dealt with at such a meeting,
 and which is signed by all members entitled to vote at that meeting, before the expiration of the period within which that meeting is to be held, shall be deemed to be a resolution passed at any annual general meeting of the company held in terms of this section on the date on which the last signature to such resolution is affixed; or
- (b) hold any annual general meetings if all the members of the company at any time agree thereto in writing, and in such a case none of the matters required by this Act to be dealt with and disposed of at an annual general meeting of an international company shall apply:

Provided that if any member of the company by notice in writing to the company requires future annual general meetings to be held, such meetings shall be held and the first of such meetings shall be held within 3 months of the receipt of the notice by the company.

[Amended Act 1991/31]

93. **Convening of Extraordinary General Meetings on Requisition** - (1) The directors of an international company shall, notwithstanding anything in its articles, on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital or other membership interests as at the date of the deposit carries the right of voting at meetings of the company, forthwith proceed to convene an extraordinary general meeting of the company to be held as soon as practicable, but in any case not later than 2 months after the receipt by the company of the requisition.

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

(3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from the date of deposit of the requisition.

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

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Act in the case of special resolutions.

94. **Calling of meetings** - (1) So far as the articles of an international company do not make other provisions in that behalf, any member holding not less than one-tenth in number or par value of the issued shares may call a meeting of the company.

(2) A meeting of an international company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days of such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed -

- (a) in the case of a meeting called as an annual general meeting, by all members entitled to attend and vote thereat; or
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds in aggregate not less than 75 per centum of the total votes of all the members entitled to vote.

(4) So far as the articles do not make other provision in that behalf, notice of every meeting shall be served on every member having a right to attend and vote thereat in the manner in which notices are required to be served by Table "A".

(5) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceedings at a meeting.

(6) Anything that may be done by an international company by resolution or special resolution passed at a meeting of that company may, subject to any special provisions in that behalf in the articles of the company, be done without a meeting and without any previous notice of the resolution being required, by means of a resolution in writing signed -

- (a) in the case of an international company which has made an allotment of its shares offered to the public, by all such members as are entitled to vote thereon;
- (b) in any other case, by not less than three fourths of such members as are entitled to vote thereon,

and such resolution shall be deemed as valid as if passed at a meeting duly held in accordance with the Act and with the Articles of that company. Any such resolution may be contained in the one instrument or in several instruments in like form.

[Amended Act 1989/22]

95. **Articles as to right to demand a poll** - (1) Any provision contained in the articles of an international company shall be void in so far as it would have the effect -

- (a) of excluding the right to demand a poll at a meeting of the company on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
- (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made -

- (i) by not less than 5 members having the right to vote at the meeting; or
- (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy to be received by the company or any other person more than 6 days before a meeting or adjourned meeting in order that the appointment may be effective thereat.

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

96 Quorum, Chairman Voting, etc. at Meetings - (1) So far as the articles of an international company do not make other provisions in that behalf, one member of the company shall be a quorum, and if more than one member is present at a meeting -

- (a) any member elected by those members may be chairman thereof; and
- (b) every member shall have one vote in respect of each share held by him.

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3) An international company may by resolution of its directors or other governing body -

- (a) if it is a member of a company, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members; or
- (b) if it is a creditor, including a holder of debentures, of an international company, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorised shall, in accordance with his authority and until his authority is revoked by the company, be entitled to exercise the same powers on behalf of the company as the company could exercise if it were an individual member, creditor or holder of debentures of the company.

(4) Unless the articles of an international company otherwise provide -

- (a) any meeting may be held by radio, telephone, closed circuit television or other electronic means of audio or audio visual communication; and
- (b) the presence of one person may constitute a meeting; and
- (c) "meeting" shall have the same meaning as in section 215 of this Act.

[Amended Act 1991/31]

97. **Proxies** - (1) A member of an international company entitled to attend and vote at a meeting of the company or at a meeting of any class of members of the company may appoint any person or persons, whether a member or members or not, as his proxy to attend and vote instead of the member at a meeting and a proxy so appointed shall have the same right as a member to speak at the meeting.

(2) Any number of shareholders of an international company may create a voting trust for the purpose of conferring upon a trustee company the right to vote or otherwise represent their shares, for a period not exceeding 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the company at its registered office and by lodging their shares with the trustee company for the purposes of the agreement and the counterpart of the voting trust agreement so deposited with the company shall be subject to the same right of examination by a shareholder of the company, in person or by agent or attorney, as are the books and records of the company, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

[Amended Act 1990/4]

98. **Power of Registrar to order meeting** - (1) If for any reason it is impracticable to call a meeting in any manner in which meetings shall be called or to conduct the meeting in the manner prescribed by the articles of this Act, the Registrar may, either of his own motion or on an application lodged on behalf of any director or of any member who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the Registrar thinks fit, and may give such ancillary or consequential directions as he thinks expedient.

(2) Any meeting called, held and conducted in accordance with any order made pursuant to this section shall, for all purposes, be deemed to be a meeting duly called, held and conducted.

99. **Special resolutions** - (1) A resolution shall be a special resolution when it is passed by such of the members having the right to vote (either in person or where proxies are allowed by proxy) as together hold in aggregate not less than 75 per centum of the total votes of the members present (either in person or by proxy) and entitled to vote on that resolution at a meeting of which not less than 21 days notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding the provisions of subsection (1), if it is so agreed by a majority in number of members having the right to vote at the meeting, being a majority which together holds in aggregate not less than 75 per centum of the total votes of the members entitled to vote, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

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

(4) At any meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded -

- (a) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in the articles, but it shall not in any case be necessary for more than 5 members to make the demand; or
- (b) if no such provision is made by the articles, by 3 members so entitled, or by 1 member or 2 members so entitled, if that member holds or those 2 members together hold not less than 10 per centum of the shares of the international company.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to be number of votes cast for and against the question and to the number of votes to which each member is entitled by this Act or the articles of the international company.

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

(7) *[Repealed by 1989 No. 22*

] [Amended Act 1989/22]

100. **Resolution Requiring Special Notice** - Where by this Act special notice is required of the intention to move a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the international company not less than 42 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof in any manner allowed by the articles not less than 14 days before the meeting but, if after notice of the intention to move such resolution has been given to the company a meeting is called for a date 42 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

101. **Filing of copies of certain resolutions and agreements** - (1) A printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

(2) A copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles of an international company have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of \$1 or such less sum as the company may direct.

(4) This section shall apply to -

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

(5) If an international company fails to comply with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(6) If an international company fails to comply with subsection (2) or (3) the company and every officer of the company who is in default shall be guilty of an offence in respect of which default is made.

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

102. **Resolutions at adjourned meetings** - Where a resolution is passed at an adjourned meeting of an international company or of holders of any class of shares or of directors, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

103. **Minutes of proceedings** - (1) Every international company shall cause -

- (a) minutes of all proceedings of general meetings and of proceedings of its directors to be entered in books kept for that purpose; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting or by one of the directors who was a party to the proceedings.

(2) Any minute so entered that purports to be signed as provided in subsection (1) shall *prima facie* be evidence of the proceedings to which it relates.

(3) Unless the Registrar otherwise directs all minute books of an international company shall be kept at the registered office of the company in the Cook Islands but duplicates of the minute books or any of them may be kept elsewhere.

(4) Where minutes have been so entered and signed, then until the contrary is proved -

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings recorded as having taken place at the meeting shall be deemed to have been duly had; and
- (c) all appointments of officers or liquidators recorded as having been made at the meeting shall be deemed to be valid.

(5) Where the articles permit a resolution to be passed otherwise than at a meeting, if assented to in writing by the person specified in the articles, the document containing such assent shall be entered in the minute book.

(6) If default is made by an international company in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

104. **Inspection of minute Book** - (1) Unless the Registrar otherwise decides, the books containing the minutes of proceedings of any meeting of an international company shall be kept by the company at its registered office in the Cook Islands and the minutes of proceedings of any meeting of members shall be open for inspection by any member without charge.

(2) Any member of an international company shall be entitled to be furnished, within 14 days after he has made a request in writing in that behalf of the company, with a copy of any minute of proceedings at a general meeting at a charge not exceeding \$1 for every 200 words or part thereof.

(3) If any copy required under this section is not so furnished by an international company, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Division 4 - Register of members

105. **Register and Index of members** - (1) Every international company shall keep a register of its members and, except in respect of any bearer shares issued by it, enter therein -

- (a) the names and addresses of the members, and a statement of the shares held by each member, distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which the name of each person was entered in the register as a member;
- (c) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (d) the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) The register of members shall be prima facie evidence of any matters inserted therein as required or authorised by this Act.

(3) If default is made in complying with this section by an international company, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

106. **Where Register To Be Kept** - (1) Unless the Registrar otherwise directs, the register of members of an international company shall be kept at the registered office of the company in the Cook Islands.

(2) Every international company shall within 2 days after the register is first kept at a place other than the registered office of the company lodge with the Registrar notice of the place where the register is kept and it shall within 14 days after any change in the place at which the register is kept lodge with the Registrar notice of the change.

107. **Inspection and closing of register** - (1) An international company may, on giving not less than 21 days' notice by advertisement in such manner as the articles provide or in default of such provision in such manner as the Registrar may approve, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any year.

(2) Unless the Articles provide that a member's interest and particulars on the register shall be available for inspection by all members, the register shall be open to the inspection of any member for the purposes of inspection of the particulars of that member and of that member's membership interest contained therein but no member shall be entitled to inspect the particulars of any other member or of the membership interest of that other member without the consent in writing of that other member first had and obtained. Any inspection by a member shall be without charge.

(3) Subject to the provisions of subsection (2), any member of an international company may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and where applicable amounts paid on shares, on payment in advance of \$5 or such

lesser sum as the company requires for every 200 words or part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of 30 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

(4) If any copy so requested of an international company is not sent within the period specified in subsection (3), the company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Amended Act 1989/22; Act 1991/31; Act 2004/14]

108. **Consequences of Default by Agent** - Where the register of members is kept at some place other than the registered office of an international company in the Cook Islands and, by reason of any default of the person in charge of such office, the company fails to comply with section 106 or 107 or with any other requirements of this Act as to production of the register, that person shall be liable to the same penalties as if he were an officer of the company who was in default.

109. **Power to Registrar to Rectify Register** - (1) If, in relation to an international company -

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register; or
- (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

the person aggrieved or any member of the company may lodge an application with the Registrar for rectification of the register, and the Registrar may refuse the application or may order rectification of the register and payment by the company or any damages sustained by any party to the application and may order the company or any party to bear the costs and expenses of, and incidental to, the application.

(2) On any application lodged under subsection (1) the Registrar may decide -

- (a) any question relating to the right or title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members of an international company, or between members or alleged members of an international company on the one hand and the company on the other hand; and
- (b) generally, any question necessary or expedient to decide for the rectification of the register.

110. **Limitation of Liability of Trustee etc., registered as Owner of Shares** - (1) A trustee, executor or administrator of an estate of a deceased person who was registered in a register of branch register kept in the Cook Islands as the holder of a share in an international company may become registered as the holder of the share in his capacity as trustee, executor or administrator of the estate and shall, in respect of that share, enjoy the same rights and be subject to the same liabilities as the deceased person while the deceased person was registered as holder of the share.

(2) A trustee, executor or administrator of an estate of a deceased person who was equitably entitled to a share in an international company, being a share registered in a register or branch register kept in the Cook Islands, may with the consent of the company and of the registered holder of the share become registered as the holder of that share in his capacity as trustee, executor or administrator of the estate and shall, in respect of the share, enjoy the same rights and be subject to the same liabilities as the deceased person would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in an international company registered in a register kept in the Cook Islands or in a branch register and held by a trustee in respect of a particular trust may, with the consent of the company, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4) Except as provided in this section, no notice of any trust express, constructive or implied shall be entered on the register and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) and the company concerned shall not be affected with notice of any trust by anything so done.

111. **Branch registers** - (1) An international company may cause to be kept in any place outside the Cook Islands a branch register of members.

(2) Where an international company keeps a branch register or branch registers of members outside the Cook Islands, the company shall lodge with the Registrar notice of the situation of the office or offices where the branch register is, or registers are, kept and of any change in the situation of that office or those offices and, if a branch register is discontinued, and the notice shall be lodged within 28 days after the date of the opening of such an office or of a change in the situation of or the discontinuance of a branch register, as the case may be.

(3) Where an international company keeps a branch register or registers of members outside the Cook Islands, it shall -

- (a) keep a duplicate register thereof at the registered office of the company in the Cook Islands or at such other place within the Cook Islands as the principal register of members is kept; and
- (b) within 28 days of making an entry in a branch register, transmit the relevant particulars to the company at its registered office in the Cook Islands and the duplicate register of that branch register kept within the Cook Islands shall be amended accordingly.

(4) A branch register shall be kept in the same manner in which the principal register is, by this Act, required to be kept, except that the advertisement required before the register is closed shall be inserted in some newspaper circulating generally in the district where the branch register is kept or in such other manner as the Registrar may approve.

(5) Subject to this section with respect to the duplicate register, the shares registered in a branch register may be distinguished from the shares registered in the principal register, and any dealing with a share on a branch register shall be noted in that register.

(6) Subject to subsections (8) and (9), where an international company keeps a branch register outside the Cook Islands, a duplicate copy of the branch register shall be sent to the company at its registered office in the Cook Islands so as to be received there by that company not later than the expiry of 1 month after the opening of the branch register and further duplicate copies thereof shall be forwarded to the company at that registered office so as to be received by it thereafter once in each succeeding 6 months and the date of receipt of each such duplicate copy by the company at that registered office shall be filed by the resident secretary of the company in the company's records in the Cook Islands.

(7) If for any reason a duplicate copy of a branch register of an international company required by subsection (6) to be forwarded to the company at its registered office in the Cook Islands is not received at that registered office within the time specified in that subsection, the last duplicate copy of the branch register received by the company shall become and be deemed to be part of and included in the principal register in lieu of the branch register kept outside the Cook Islands prior thereto and the branch register kept outside the Cook Islands shall thereupon cease to be a register of the company and shall be destroyed by the person having custody thereof.

(8) Subsection (6) shall only apply to an international company during such period or periods as the Registrar by order declares that it shall apply and that order -

- (a) shall only be made upon application of the company; and
- (b) may be revoked by the Registrar and shall be revoked upon the application of the company,

and a copy of such an order and of any revocation thereof shall be kept by the company at its registered office in the Cook Islands and shall be open to inspection by any person entitled to inspect the register of members.

(9) Where subsection (6) applies, an international company may, or any shareholder or resident director of the company may, apply to the Registrar for dispensation from compliance with the whole or any part of subsection (6) and the Registrar may grant such dispensation and may, as a condition thereof, impose such terms and conditions thereon as he sees fit and where terms and conditions are imposed the principal register and every branch register of the company shall be kept in accordance with those terms and conditions and shall be noted with those terms and conditions and a copy of any dispensation made under this subsection and any variation thereof shall be kept by the company at its registered office in the Cook Islands and shall be made available for inspection by any person entitled to inspect the register of members.

(10) An international company which keeps a branch register outside the Cook Islands may discontinue the branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same place or to the principal register.

(11) If by virtue of the law in force in any other country a country incorporated under that law keeps in the Cook Islands a branch register of its members, regulations may be made declaring that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modification specified in the regulations, apply to and in relation to any such branch register kept in the Cook Islands as they apply to and in relation to the registers of international companies under this Act and thereupon those provisions shall apply accordingly.

(12) If an international company defaults in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Amended Act 1990/4]

Division 5 - Annual Return

112. **Annual Return** - (1) An international company shall make a return, called the "annual return", containing the prescribed particulars and accompanied by such copies of documents as are required to be included in the return under the regulations, if any, made under this section and such of the certificates and other particulars prescribed in such regulations as are applicable to the company.

(2) The annual return shall be in accordance with the form prescribed by regulation for the purpose or as near thereto as circumstances admit and shall be made up to a date not earlier than 28 days before the date of lodgement.

(3) In the case of an international company keeping a branch register outside the Cook Islands, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the annual return, be included in the annual return made next after copies of those entries are received in the registered office of the company in the Cook Islands.

(4) The annual return of an international company signed by a director or secretary of the company shall be lodged with the Registrar and the prescribed fee payable therefor paid at least once in each calendar year not later than 28 days prior to the anniversary of the date of its incorporation.

(5) Subject to section 117, an annual return of an international company shall be accompanied by a certificate from a registered company auditor stating-

- (a) that proper accounts of the company for the financial period ending on the date specified have been kept and a balance sheet and profit and loss account for that period prepared and audited by that auditor or some other named registered company auditor; and
- (c) that the director giving the certificate under the provisions of subsection (6) has been furnished with a copy of those accounts,

and the registered company auditor shall retain for 6 years a copy of accounts to which his certificate relates.

(6) An annual return of an international company shall be accompanied by a certificate from a director stating that he has considered the audited accounts mentioned in subsection (5) and certifying, with or without qualifications-

- (a) that the same show that the company was solvent at the date to which they relate;
- (b) that he is unaware of any circumstances which render those accounts untrue; and
- (c) that no circumstances have occurred since the date to which those accounts relate which would render the company insolvent,

and if such a certificate cannot be given without qualification, the respect in which it is qualified shall be set out.

(6A) Where in any case the Registrar is satisfied that it is not practical (having regard to the accounting period of an international company) for an international company to comply with the provisions of subsection (5) or (6) at the time of filing an annual return he may on the application of that company order that the time for compliance with those provisions be extended and pending compliance accept the annual return and the prescribed fee payable therefor without the accompanying certificates required by that subsection.

(7) If an international company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Amended Act 1989/22]

PART VI

ACCOUNTS AND AUDIT

Division 1 - Accounts

113. **Accounts to be kept** - (1) An international company shall cause proper accounts and records to be kept with respect to -

- (a) all sums of money received and expended by the company, specifying the items or matters in respect

of which the receipt or expenditure took place;

- (b) all sales and purchases of goods by the company;
- (c) all assignments of rights or assumption of liabilities by the company;
- (d) all transactions of the company affecting the assets or liabilities of the company; and
- (e) the assets and liabilities of the company.

(2) The accounts of an international company shall be kept at the registered office of the company in the Cook Islands or at such other place in the Cook Islands as the directors think fit and shall at all times be open to inspection by any director and shall be kept in such manner as to enable them to be conveniently and properly audited.

(3) The Registrar may in any particular case order that the accounting and other records of an international company be open to inspection by a registered company auditor acting for a director, but only upon an undertaking in writing given to the Registrar that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(4) Any person who, being a director of an international company other than a resident director, fails to take all reasonable steps to secure compliance by the company with the requirements of this section, section 114 and section 115 or, whether a resident director or not, has by his own wilful act been the cause of any default by the company thereunder shall be guilty of an offence against this Act.

(5) Notwithstanding the provisions of subsection (2), an international company may with the prior written approval of the Registrar keep its accounts at such place outside the Cook Islands as its directors think fit. Any approval of the Registrar may be given (subject to the terms of any regulations governing the keeping of accounts outside the Cook Islands) upon such terms and conditions as may from time to time be imposed by him.

[Amended Act 1989/22]

114. **Accounts to be Laid before Meeting or Circulated** - (1) At any meeting of an international company at which a member so requires, the directors shall either lay before the meeting a profit and loss account of the company and a balance sheet thereof made up to a date not more than 12 months before the date of the meeting, or shall, at an adjournment of the meeting held not later than 2 months thereafter, lay before such adjourned meeting a profit and loss account and balance sheet made up to the original date of the meeting, or such other more remote date not being more than 12 months before the original date of the meeting as the Registrar upon application lodged with him may fix.

(2) In the case of an international company the articles of which requires that a dividend be declared only upon a resolution of members, a member may before the passing of such resolution -

- (a) at a meeting at which he is present in person or by proxy; or
- (b) by notice in writing served at the registered office of the company in the Cook Islands,

required that a balance sheet and profit and loss account made up to a date not earlier than 2 months before the date of a resolution declaring a dividend be circulated to members and thereupon no such resolution shall be passed until 21 days after circulation thereof.

(3) A balance sheet or profit and loss account of an international company laid before a meeting or sent to

members shall be accompanied by all documents required by this Act to be attached thereto.

(4) A balance sheet under this section shall state, in addition to any other information included therein -

- (a) the share capital constituted by -
 - (i) shares having a par value; and
 - (ii) shares having no par value;
- (b) the classes of shares, their respective number and nominal value, into which the share capital constituted by shares having a par value has been divided and in the case of shares of no par value, the number of such shares;
- (c) the number of the issued shares and the amount of the issued shares capital in respect of each class of shares;
- (d) the stated capital account, setting out the preliminary expenses, commission and expenses of issue of no par value shares charged against that account during the accounting period;
- (e) in the case of a mutual company the number and total aggregate value of all membership interests issued by the company.

[Amended Act 1991/31]

115. **Regulations as to Accounts** - Accounts of an international company shall, so far as regulations prescribe -

- (a) be prepared in the manner prescribed;
- (b) be presented to such meetings as may be prescribed;
- (c) be lodged at the times and in the manner prescribed;
- (d) be accompanied by such declarations and reports by such persons as may be prescribed;
- (e) have attached thereto such annexures, schedules or details as may be prescribed; and
- (f) be circulated amongst such persons as are prescribed.

Division 2 - Audit

116. **Auditor to be Appointed** - (1) Subject to section 117, the directors of an international company shall, within 90 days of its incorporation, appoint a registered company auditor to be the auditor of that company and that auditor shall hold office until the expiration of the audit period expiring next after 18 months from the date of incorporation.

(2) At the conclusion of his first term of office the auditor, if willing and eligible, shall be reappointed for a further 2 audit periods.

(3) No person shall be appointed to be, or to act as, the auditor of an international company without his prior written consent.

(4) An international company shall, whenever it appoints an auditor, lodge with the Registrar within 30 days of the appointment a notice thereof in the prescribed form accompanied by the auditor's written consent.

117. **Auditor need not be appointed in certain circumstances** - An international company shall not need to appoint a registered company auditor to be the auditor of the company so long as -

- (a) the company or an officer, director, agent or any person on behalf of the company does not -
 - (i) issue an invitation or distribute forms of application to the public or to any member of the public to subscribe for shares or debentures in the company; or
 - (ii) issue an invitation to the public or to any member of the public to deposit money with or lend money to the company; and
- (b) the members of the company so resolve at each annual general meeting of the company that such an appointment should not be made, or in the case of a company which pursuant to section 92(6)(b) does not hold an annual general meeting the members so agree in writing that such an appointment should not be made. In the case of the appointment of an auditor in respect of the first audit period of any company it shall be sufficient for the resolution not to appoint an auditor to be passed at the first annual general meeting of the company.

[Amended Act 1989/22; Act 1991/31]

118. **Appointment and Removal of Auditors** - (1) Subject to the provisions of section 116 and 117, an international company shall appoint a registered company auditor to be auditor of the company for 2 audit periods upon the previous auditor ceasing to hold office.

(2) An international company may, at a general meeting of which notice has been given to the auditor and the Registrar not less than 28 days before the date of the meeting but not otherwise, remove an auditor from office but shall at the meeting at which the auditor is removed or at a general meeting held within 1 month thereafter appoint a registered company auditor approved by the Registrar to take the place of the auditor so removed.

119. **Auditor Ceasing to be Registered** - (1) Unless the Registrar otherwise directs, or the directors otherwise resolve, if an auditor ceases to be a registered company auditor he shall continue to hold office as auditor of an international company until completion of the auditor work for the audit period during which he ceased to be a registered company auditor.

(2) Where an auditor ceased to be registered and does not continue in office as auditor of an international company as aforesaid, the company shall immediately appoint another registered company auditor at a fee to be fixed by agreement between that other auditor and the directors and that other auditor shall be the auditor of the company for the purposes of this Act for the period then current and, subject to making proper appraisal and review of the work of the auditor ceasing to be registered, such other auditor shall be entitled to use and rely upon the work of the first-mentioned auditor done up to the time of the appointment of the new auditor.

(3) For the purposes of subsection (2), it is hereby declared that it is an implied term of the contract between an international company and its auditor that the auditor shall make available to another auditor taking office either in lieu of or in addition to the first-mentioned auditor during the course of an audit period all working papers relating to the affairs of the company made and kept by the first-mentioned auditor during his tenure of office.

120. **Term of Office when Auditor Ceases to be Registered** - An auditor appointed in addition to or in place of an auditor ceasing to hold office as a registered company auditor shall hold office during the period for which the auditor so ceasing would have held office had he not so ceased.

121. **Partners of Auditors** - Where a registered company auditor is a member of a partnership carrying on the practice of accountants and auditors and one or more members of that partnership is or are the auditors of an international company, another member of such partnership being a registered company auditor may, if the directors so resolve, be substituted as auditor of the company for the auditor ceasing to be registered with the written consent of the substitute auditor.

122. **Remuneration of Auditor** - The fees and expenses of an auditor of an international company may be fixed by the directors unless the auditor requires such fees and expenses to be fixed by a resolution of the members of the company.

123. **Auditor may Attend Meetings** - An auditor of an international company shall be entitled to attend and address all meetings of members of the company.

124. **Auditor to Audit** - (1) An auditor of an international company shall carry out an audit in respect thereof in each audit period.

(2) Every auditor shall report to the members as to his audit and matters disclosed thereby and as to every balance sheet and profit and loss account and as to any other accounts put before the members.

(3) Every auditor shall give such further reports and information as are required by regulations made under this Act.

125. **Powers of Auditors** - Every auditor shall obtain such information and explanations in relation to the affairs of the international company of which he is auditor and of any other company which by virtue of section 4(5) is deemed to be a related company as he reasonably requires to complete his audit and the company shall take all proper steps to ensure that he is able to obtain such information and explanations and to have access to such books and records as he requires for his audit.

126. **Powers, Duties and Obligations of Auditors** - The powers, duties and obligations of auditors provided by this Act are in addition to any powers, duties and obligations specified in the articles of an international company and all auditors shall be entitled to be furnished with a copy of such articles and shall be required to make themselves acquainted with the terms thereof.

PART VIA **REGISTERED LISTED COMPANIES**

Division 1 - Registration

126A. **Interpretation** - In this Part of this Act, except insofar as the context or subject matter otherwise indicates or requires -

"Approved Stock Exchange" means any Stock Exchange lawfully operating for the trading of equities in any of the following places:

- (i) Australia
- (ii) Canada
- (iii) France

- (iv) Hong Kong
- (v) Indonesia
- (vi) Japan
- (vii) Luxembourg
- (viii) Malaysia
- (ix) Netherlands
- (x) New Zealand
- (xi) Singapore
- (xii) South Africa
- (xiii) Taiwan
- (xiv) Thailand
- (xv) United Kingdom
- (xvi) United States of America

and any other Stock Exchange which has been approved by the Registrar pursuant to subsection (2) of section 126B of this Act;

"Registered Listed Company" means a company listed on an Approved Stock Exchange and registered pursuant to section 126E of this Act.

[Added Act 1989/22; Repealed and replaced Act 1990/4]

126B. **Approval of Stock Exchanges** - (1) Any person may apply to the Registrar for his approval of any Stock Exchange as an Approved Stock Exchange.

(2) Upon application under subsection (1), supported by such material as he considers adequate and satisfactory, the Registrar may, if he is satisfied that the relevant Stock Exchange provides an active public market in the shares or securities or both of substantial public companies, grant his approval in writing to that Stock Exchange being designated an Approved Stock Exchange and, if such approval is given, that Stock Exchange shall be deemed thereafter to be an Approved Stock Exchange pursuant to this Act.

[Added Act 1990/4]

126C. **Entitlement to apply for registration as Registered Listed Company** - (1) Any international company which is listed or proposes to become listed on an Approved Stock Exchange may apply to the Registrar for registration pursuant to section 126E of this Act.

(2) Any foreign company which is listed on an Approved Stock Exchange and which proposes to be registered as being continued pursuant to section 16 of this Act may apply to the Registrar for registration pursuant to section 126E of this Act.

[Added Act 1990/4]

126D. **Application for Registration** - Application for registration shall be made by lodging with the Registrar:

- (a) a request for registration in the prescribed form;
- (b) a resolution of the directors of the applicant company resolving to apply for the registration;
- (c) in the case of an international company not listed on an Approved Stock Exchange, a resolution of the

directors resolving to apply to an Approved Stock Exchange for listing;

- (d) in the case of a foreign company which is listed on an Approved Stock exchange, a resolution of the directors resolving to apply to be registered as being continued pursuant to section 16 of the Act;
- (e) The prescribed fee.

[Added Act 1990/4]

126E. **Registrar's duties** - (1) On compliance with the requirements for registration set out in section 126D the Registrar shall enter on the certificate of incorporation of the company or certificate of continuance as the case may be a Minute that the company is registered under this section and shall sign the Minute and state therein the date thereof:

Provided that in the case of a foreign company proposing to be registered as being continued pursuant to section 16 of this Act the Registrar shall not sign and date the Minute until the date on which the foreign company is so registered pursuant to section 16 of this Act.

(2) The completed Minute shall be conclusive evidence that all the requirements of this Division of this Part of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is a Registered Listed Company.

(3) Every subsequent renewed certificate of incorporation or continuance of a Registered Listed Company shall have a similar Minute entered thereon signed by the Registrar on the date of the issue of the certificate and such Minute shall be conclusive evidence in a similar manner to that provided in subsection (2) of this section.

[Added Act 1990/4]

Division 2 - Special Provisions

126F. **Application of this Division** - (1) The provisions of this Division of this Part of this Act shall apply to every Registered Listed Company and shall not apply to any company which is not a Registered Listed Company.

(2) In the application of the provisions of this Division of this Part of this Act to any Registered Listed Company if there is any conflict between any provision of this Division of this Part of this Act with any provision of any other part of this Act the provisions of this Division of this Part of this Act shall prevail.

[Added Act 1990/4]

126G. **Inspection, production and copying of documents kept by Registrar** - (1) Any person may:

- (a) inspect any document kept by the Registrar in connection with any Registered Listed Company;
- (b) require any certificate issued under this Act or a copy or extract from any document kept by the Registrar in respect of any Registered Listed Company to be given or certified by the Registrar on the payment of such fees as may be prescribed.

(2) Subsection (5) of section 8 and subsection (2) and (2A) of section 12 of this Act shall not apply where the information relates to any Registered Listed Company.

[Added Act 1990/4; Amended Act 1991/31]

126GA. **Mode in which objects of Company may be altered** - (1) Section 19 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to this section, a Registered Listed Company, if so authorised by its articles, may by special resolution alter its memorandum with respect to the objects of the company.

(3) Where a Registered Listed Company proposes to so alter its memorandum, it shall give by post 21 days' written notice of the proposed special resolution and the intention to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(4) The notice shall be given to members and registered debenture holders.

(5) The Court may, in the case of a person or class of persons for such reasons as seem sufficient to it, dispense with the notice required by subsection (3).

(6) An application may be made to the Court for the cancellation of such a resolution -

- (a) by the holders of not less than 10 per centum in the aggregate of the nominal value of the company's issued share capital or any class of that capital where the company has issued only par value shares; or
- (b) by not less than 10 per centum of the company's members; or
- (c) by the holders of not less than 10 per centum in nominal value of the company's debentures,

and the resolution shall not have effect except in so far as it is confirmed by the Court or, if no application shall be made to the Court then until that day being 21 days after the day on which the resolution was passed.

(7) The application shall be made within 21 days after the date on which the resolution was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(8) On the application the Court -

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

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

(10) A copy of the resolution shall be lodged with the Registrar by the Registered Listed Company within 14 days after the expiration of the 21 days referred to in subsection (9), but if an application has been lodged with the Registrar together with a sealed copy of the order of the Court, within 14 days after the application has been determined by the Court.

[Added Act 1991/31]

126GB. **Alteration of Articles** - (1) Section 26 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to this Act, a Registered Listed Company may by special resolution alter or add to its articles.

(3)(a) A copy of such resolution shall be lodged with the Registrar within 1 month of its being passed or within such further period as the Registrar may allow.

(b) Notwithstanding any failure to lodge such resolution with the Registrar the resolution shall be effective from the date of its passing.

[Added Act 1991/31]

126H. **Premiums received on issue of shares to be share capital and limitations on application thereof** - (1) Section 40 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where a Registered Listed Company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the share premium account and where assets are acquired by the issue of shares of a Registered Listed Company and no consideration is recorded, the assets so acquired shall be valued and if the value of the assets is more than the par value of such shares, the difference between the par value of the shares and the value of the assets so acquired shall be transferred to the share premium account.

(3) The share premium account may, notwithstanding anything contained in subsection (2), be applied by the Registered Listed Company in paying up unissued shares of the Registered Limited Company to be issued to members of the Registered Listed Company as fully paid capitalisation shares or in writing off -

(a) the preliminary expenses of the Registered Listed Company; or

(b) the expenses of, or the commission paid or discount allowed on, the creation or issue of any shares or debentures of the Registered Listed Company;

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

(4) Except as provided in subsection (3) of this section, the share premium account shall be treated as part of the paid up capital of the Registered Listed Company for the purpose of this Act.

[Added Act 1990/4; amended Act 1991/31]

126I. **Section 126H(2) not to apply to premiums on shares issued pursuant to scheme of acquisition** - (1) For the purposes of this section and section 126J:

"equity share capital" means, in relation to a Registered Listed Company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

"issuing company" means a Registered Listed Company which issues shares in consideration for the acquisition of shares in, or the undertaking of, another company;

"merged company" means a company in respect of which an issuing company issues shares;

"scheme of acquisition" means:

- (a) any arrangement pursuant to sections 126T, 126V or 126W of this Act;
- (b) any scheme of arrangement approved or ordered by a Court of competent jurisdiction in a place in which is located an Approved Stock Exchange;
- (c) any sale or arrangement of the whole or part of the business or property of a Registered Listed Company to which section 181 of this Act applies;

"undertaking" means the whole of a business and all property, rights and interests relating to that business.

(2) Nothing in subsection (2) of 126H of this Act shall apply to the issue of shares at a premium by an issuing company pursuant to a scheme of acquisition whereby the shares are issued as fully paid up in consideration for either:

- (a) the transfer or issue to the issuing company of shares in a merged company, or the cancellation of shares in a merged company, which results in the issuing company acquiring (together with any shares already held by it or any subsidiaries of the issuing company) 90 percent or more of the nominal value of the issued equity shares in the merged company; or
- (b) the transfer or sale to the issuing company or the whole of the undertaking of the merged company.

[Added Act 1990/4; Amended Act 1991/31]

126J. **Section 126H(2) not to apply to premiums on shares issued in certain group reconstructions** - (1) This section applies to the issue by an issuing company which is a wholly owned subsidiary of its holding company of shares to:

- (a) that holding company; or
- (b) a wholly owned subsidiary of that holding company, in consideration for the transfer to the issuing company of shares in any other subsidiary of that holding company.

(2) Where an issuing company which is a Registered Listed Company issued shares to which this section applies at a premium, nothing in subsection (2) of 126H of this Act shall require the issuing company to transfer to the share premium account any sum greater than the amount by which the value of the shares in the subsidiary transferred to the issuing company as shown in the accounting records of the company transferring the shares immediately before the transfer, exceeds the nominal value of the shares issued by the issuing company.

(3) For the purposes of this section, a company shall be deemed to be a wholly owned subsidiary of another if

it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

[Added Act 1990/4]

126K. **Balance Sheet to disclose origin of sums not required to be transferred to share premium account** - Where a Registered Listed Company issues shares at a premium but, by virtue of section 126I of this Act, is not required to transfer a sum equal to the aggregate amount or value of the premiums on those shares to a share premium account, and that sum is included or shown in any reserve or retained profits of the Registered Listed Company in its balance sheet, that balance sheet shall state, whether by note or otherwise, the amount, origin, and nature of that sum.

126KA. **Proceeds of issue of shares of no par value to be stated capital** - (1) Section 41 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) The whole of the proceeds of an issue of shares having no par value shall be paid-up capital of a Registered Listed Company and shall be transferred to an account called the "stated capital account".

(3) If shares having no par value are issued by a Registered Listed Company for a consideration other than cash, a sum equal to the value of the consideration as determined by the directors shall be transferred to the stated directors shall be transferred to the stated capital account.

(4) Notwithstanding subsections (2) and (3), the stated capital account may be applied by a Registered Listed Company in writing off -

- (a) the preliminary expenses of the company; or
- (b) the expenses of, or the commission paid on, the creation or issue of any such shares.

[Added Act 1991/31]

126KB. **Effect of conversation of par value share capital into no par value share capital and vice versa** - (1) Section 42 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where a Registered Listed Company converts all its or ordinary or preference shares having a par value, or both such ordinary and such preference shares, into shares without par value, there shall be transferred to the stated capital account of the company -

- (a) the whole of the ordinary or preference share capital, as the case may be; and
- (b) the whole of the share premium account or that part thereof contributed to it by the shares so converted.

(3) Where a Registered Listed Company converts all its ordinary or preference shares of no par value or both such ordinary and such preference shares into shares having a par value, there shall be transferred to the share capital account of the company the whole of the stated capital account or that part thereof contributed to it by shares so converted.

(4) Fractions, fractional surpluses or amounts arising in respect of the nominal share capital or the stated capital may be rounded off.

[Added Act 1991/31]

126KC. **Currency of shares, interest-bearing shares, redeemable shares and shares with special rights** - (1) Section 43 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) A Registered Listed Company shall have power to issue the number of shares stated in its memorandum and those shares may be shares having a par value, or may be shares having no par value, or a combination of both, and may be divided into one or more classes, with such designations, preferences, limitations and relative rights as shall be stated or provided for in the articles and all prices and values given in respect of shares shall be expressed in dollars or in the money of any other country.

(3) The articles may limit or deny voting rights of or provide special voting rights for the shares of any class or the shares within any class to any extent not inconsistent with the provisions of this Act or the regulations.

(4) A Registered Listed Company may issue shares of preferred or special classes and in particular, but without limiting the generality of the foregoing, may issue shares -

- (a) subject to the right of the company to redeem any of those shares at the price fixed by the articles for the redemption thereof or at the price fixed pursuant to power contained therein;
- (b) entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends;
- (c) having preference over any other class or class of shares as to the payment of dividends;
- (d) having a preferential right to a dividend;
- (e) having preference in respect of the assets of the company over any other class or classes of shares upon the voluntary or compulsory liquidation of the company;
- (f) having rights only to return of paid up capital or to return of paid up capital plus no more than a fixed proportion thereof upon a liquidation of the company;
- (g) convertible into shares of any other class or into shares of any series of classes: Provided that shares shall not be converted into a class having prior or superior rights or preferences as to dividends or distribution of assets upon liquidation over shares proposed to be converted unless the consent of all members holding shares having such prior or superior rights is obtained;
- (h) subject to forfeiture by the company in the circumstances or in the event provided in the articles or in terms of issue of the shares: Provided -
 - (i) that the articles shall not be altered to make shares subject to forfeiture which were not originally so issued without the holders thereof being given an opportunity to object thereto and, in the event of their so doing, any alteration to that effect shall be void; and
 - (ii) that a forfeiture or, where there have been previous forfeitures, the last forfeiture shall not be effective for any purpose if it by itself or in any combination with any other forfeiture results in the reduction of the number of members of the company to less than permitted by this Act;
- (i) unless the articles provide to the contrary, on which interest is payable by the company to the holder at such rates and upon such terms and conditions as are fixed at the time of issue or by the articles:

Provided that such interest shall not become due and payable by the company to the holder if the company has any liabilities actual or contingent other than liabilities for interest on shares and, upon a winding-up, there shall be deemed to be no liability in the company for the payment of such interest unless and until the claims of all creditors and the costs of the winding-up have been met or satisfied.

[Added Act 1991/31]

126L. **Redemption of redeemable shares** - (1) A Registered Listed Company shall not redeem any of its redeemable shares unless that Registered Listed Company complies with the following provisions:

- (a) at a date not more than 30 days and not less than 15 days before the date from which the redemption of the shares is to have effect the Registered Listed Company shall cause a notice to be published in an approved newspaper in each of the jurisdictions in which the Registered Listed Company is listed stating the number of the shares in issue, the number of the shares to be redeemed, and the date as from which the redemption is to have effect; and
- (b) on the date as from which the redemption is to have effect a statutory declaration shall be declared by at least 2 directors of the Registered Listed Company declaring either that on that date the Registered Listed Company is to the best of their knowledge, after due inquiry able to pay all its debts (including contingent debts) or that all the creditors of the Registered Listed Company on that date have expressed in writing their concurrence to the redemption; and
- (c) where a Registered Listed Company redeems any of its shares pursuant to this section, then within 28 days after the date as from which the redemption has effect the Registered Listed Company shall file a memorandum, with a copy of the notice referred to in paragraph (a) and the declaration referred to in paragraph (b) annexed thereto, together with the prescribed fee in the office of the Registrar stating that the provisions of this section have been duly complied with.

(2) If any Registered Listed Company fails to comply with paragraphs (a), (b) or (c) of this section every officer of the Registered Listed Company shall be liable to a fine of \$5,000.00.

126M. **Dealing by a company in its own shares** - (1) Section 46 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to subsection (5) of this section, a Registered Listed Company shall not purchase its own shares or provide financial assistance whether by guarantee, loan or otherwise and whether directly or indirectly for the purchase of its shares unless -

- (a) the articles of the company authorise such purchase or financial assistance;
- (b) the purchase or financial assistance is made from surplus (including earned surplus and capital surplus) or the proceeds of a fresh issue of shares made for the purpose of the purchase or financial assistance;
- (c) the purchase or financial assistance has been authorised by the company in general meeting; and
- (d) on the date as from which the purchase or financial assistance is to have effect a statutory declaration is declared by at least two directors of the Registered Listed Company declaring either that on that date the Registered Listed Company is to the best of their knowledge, after due enquiry, able to meet all its current obligations as they fall due or that all the creditors of the Registered Listed Company on

that date have expressed in writing their concurrence to the purchase or the financial assistance as the case may be.

(3) For the purposes of paragraph (c) of subsection (2) of this section, an authorisation given by a company in general meeting shall be valid for the period expiring on the date of the next annual general meeting of the company and such period may be extended by the company at such annual general meeting until the date of the next annual general meeting of the company.

(4) Where a Registered Listed Company purchases its shares or provides financial assistance for the purchase of its shares pursuant to subsection (2) of this section, then within 28 days after the date as from which the purchase or the financial assistance as the case may be has effect the Registered Listed Company shall lodge a memorandum, with a copy of the declaration referred to in paragraph (d) annexed thereto, together with the prescribed fee with the Registrar stating that the provisions of subsection (2) of this section have been duly complied with.

(5) Notwithstanding subsection (2) a Registered Listed Company may purchase or otherwise acquire its own shares for the purposes of -

- (a) eliminating fractional shares;
- (b) paying dissenting shareholders entitled to payment for their shares under the provisions of this Act or regulations made under this Act; or
- (c) effecting, subject to this Act, the retirement of its redeemable shares by redemption or by purchase at a price not exceeding the redemption price.

(6) For the purposes of this section "purchase" shall include exchange of shares for assets and acquisition by any method, but shall not include redemption.

(7) If a company acts in contravention of this section, the company and any director of the company who made a declaration pursuant to paragraph (d) of subsection (2) without reasonable grounds for any opinion expressed therein commits an offence and shall be liable to a fine not exceeding \$10,000.

(8) Nothing in this section shall affect the validity of any contract for the sale of shares in a Registered Listed Company or financial assistance made in breach of the provisions of this section.

[Added Act 1990/4; Repealed and replaced Act 1991/31]

126N. **Cancellation of re-acquired shares by a Registered Listed Company** - All shares of a Registered Listed Company purchased by that Registered Listed Company in accordance with the provisions of subsection (2) of section 126M of this Act shall be cancelled and thereupon such shares shall be restored to the status of authorised but unissued shares and a statement of cancellation of such shares shall be filed with the Registrar in accordance with this Act.

[Added Act 1990/4; Amended Act 1991/31]

126O. **Power to issue shares at a discount** - (1) Section 50 of this Act shall not apply to Registered Listed Companies and instead, (subject as provided in this section), it shall be lawful for a Registered Listed Company to issue at a discount shares in the Registered Listed Company of a class already issued
Provided that:

- (a) the issue of the shares at a discount are authorised by resolution passed in general meeting of the

Registered Listed Company, and are sanctioned by the Court;

- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c) at the date of the issue not less than 1 year has elapsed since the date on which the Registered Listed Company was entitled to commence business;
- (d) the shares are issued within 1 month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a Registered Listed Company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares of a Registered Listed Company must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this subsection, the company and every officer of the company who is in default shall commit an offence against this Act.

[Added Act 1990/4]

126P. **Reduction of share capital** - (1) Section 54 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to confirmation by the Court, a Registered Listed Company may, if so authorised by its articles, by special resolution, reduce its share capital in any way and, in particular, without limiting the generality of the foregoing, may do all or any of the following:

- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
- (b) cancel any paid up capital which is lost or unrepresented by available assets;
- (c) repay any paid up share capital which is in excess of the needs of the Registered Listed Company or which it is otherwise in the interests of the Registered Listed Company as a whole to have paid off,

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

(3) Where the proposed reductions of share capital involves limitation of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, and in any other case if the Court so directs -

- (a) every creditor of the Registered Listed Company who, at the time fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Registered Listed Company would be admissible in proof against the Registered Listed Company, shall be entitled to object to the reduction;
- (b) the Court, unless satisfied by statutory declaration that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and the amount of their

debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered;

- (c) where a creditor entered on the list whose debt is not discharged or whose claim has not been determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the Registered Listed Company securing payment of his debt or claim by appropriating as the Court directs -
 - (i) if the Registered Listed Company admits the full amount of the debt or claim or although not admitting it is willing to provide for it, the full amount of the debt or claim; or
 - (ii) if the Registered Listed Company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court.

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

(5) All applications to the Court under the provisions of subsections (3) and (4) shall be lodged with the Court and the Registered Listed Company making such application shall bear the costs of any enquiry and advertisement directed by the Court under the provisions of those subsections.

(6) The Court, if satisfied with respect to every creditor who under subsection (3) is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit and may by order require the Registered Listed Company to publish as the Court directs the reasons for reduction or such other information as the Court thinks expedient, and, if the Court thinks fit, the causes which led to the reduction.

(7) An order made under subsection (6) shall show the amount of the share capital of the Registered Listed Company as altered by the order, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the order deemed to be paid up on each share.

(8) A copy of the order made by the Court confirming a resolution for reducing share capital shall be lodged by the Registered Listed Company with the Registrar together with the prescribed fee and on the filing of the copy of the order the reduction of share capital confirmed by that order shall take effect.

(9) A certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of a Registered Listed Company is as stated in that order.

(10) On the filing of the copy of an order the particulars shown in the order pursuant to subsection (7) shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Court to be made in the name of the Registered Listed Company shall, in the case of any addition to the same, for such period as is specified in the order of the Court, be deemed to be an alteration of the memorandum for the purposes of this Act.

(11) A member, past or present, shall not be liable in respect of any share, to any call or contribution exceeding in amount the difference between the amount of the share as fixed by the order and the amount paid, or the reduced amount which is to be deemed to have been paid, on the share, as the case may be. Where any creditor entitled to object to the reduction is not entered on the list of creditors, by reason of his ignorance of the proceedings for

reduction or of their nature and effect upon his claim, and after the reduction the Registered Listed Company is unable to pay the amount of his debt or claim within 1 year after the debt or claim becomes due and payable or 1 year after the date or reduction whichever is the later then -

- (a) every person who was a member of that Registered Listed Company at the date of the registration of the order for reduction shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Registered Listed Company had commenced to be wound up on the day before the date of the registration of the order for reduction; and
- (b) if that Registered Listed Company is wound up by the Court on an application by any such creditor, then upon proof of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, the Court may settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding-up,

but nothing in this subsection shall affect the rights of the contributories among themselves.

(12) Any officer of any Registered Listed Company who -

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

shall be guilty of an offence against this Act and shall be personally liable for the amount of such debt or claim.

[Added Act 1990/4]

126Q. **Rights of holders of classes of shares** - (1) Section 55 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) If the share capital of a Registered Listed Company is divided into different classes of shares and provision is made by its articles for authorising the variation or abrogation of the rights attached to any class of shares and provision is made by its articles for authorising the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares and, in pursuance of the said provisions, the rights attached to any class of shares are at any time varied or abrogated, the holders or not less in the aggregate than 10 per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may lodge an application with the Court to have the variation or abrogation cancelled and if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court on application lodged by the Registered Listed Company in the manner prescribed.

(3) An application shall not be invalid by reason of any applicant having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any relevant fact was not disclosed by the Registered Listed Company to that applicant before he so consented or voted and the applicant shall be deemed not to have consented to, or voted in favour of that resolution.

(4) The application shall be lodged within 28 days after the date on which consent was given or the resolution was passed or such further time as the Court allows, and the application shall be lodged in the first instance in writing in the prescribed form.

(5) After hearing the applicant and any other person who lodges an application with the Court to be heard and who appears to the Court to be interested, the Court may disallow or confirm the variation or abrogation as the case may be. The decision of the Court shall be final and it shall have a discretion as to how the costs and expenses of and incidental to such application shall be paid and may order accordingly.

(6) A Registered Listed Company shall within 28 days after the making of an order by the Court on any such application cause to be lodged with the Registrar a copy of the Court's order and if default is made in complying with this provision the Registered Listed Company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Added Act 1990/4]

126R. **Power to issue debentures** - Paragraph (e) of subsection (1) and subsection (3) of section 57 of this Act shall have no application to Registered Listed Companies which shall have no power to issue Table B Debentures.

[Added Act 1990/4]

126RA. **Duties and liabilities of officers** - (1) Sections 89 and 89A of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) A director of a Registered Listed Company shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(3) An officer of a Registered Listed Company shall not make use of any information acquired by virtue of his position as such an officer to gain directly or indirectly an improper advantage for himself or to cause detriment to the company.

(4) An officer of a Registered Listed Company who commits a breach of this section shall be -

- (a) liable to the company for any profit made by himself and of any damage suffered by the company as a result of such breach; and
- (b) guilty of an offence against this Act.

(5) This section is in addition to and not in derogation of any other rule of law relating to the duty or liability of directors or officers of a company.

[Added Act 1991/31]

126S. **Meetings** - (1) The approval of the members of any Registered Listed Company shall not be required to locate any annual general meeting or extraordinary general meeting of the company in any country in which the company is listed on an Approval Stock Exchange.

(2) Subsection (6) of section 92 of this Act shall not apply to Registered Listed Companies.

[Added Act 1990/4; Amended Act 1991/31]

126SA. **Inspection and closing of register** - (1) Section 107 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) A Registered Listed Company may, on giving not less than 21 days notice by advertisement in such manner as the articles provide or in default of such provision, such manner as the Registrar may approve, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any year.

(3) The register shall be open to the inspection of any member. Any inspection by a member shall be without charge.

(4) Any person may request the Registered Listed Company to furnish him with a copy of the register, or any part thereof, on payment in advance of \$5 or such lesser sum as the company requires for every 200 words or part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of 30 days or within such further period as the Registrar considers reasonable in the circumstances, commencing on the day next after the day on which the request is received by the company.

(5) If any copy so requested of a Registered Listed Company is not sent within the period specified in subsection (4), the company and every officer of the company who is in default shall be guilty of an offence against this Act.

[Added Act 1991/31]

126T. **Power to compromise with creditors and members** - (1) Section 127 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) In this section, except insofar as the context or subject matter otherwise indicates or requires -

"arrangement" includes a reorganisation of the share capital of a Registered Listed 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 any Registered Listed Company liable to be wound up under this Act.

(3) Where a compromise or arrangement is proposed between a Registered Listed Company and its creditors or any class of them or between the company and its members or any class of them, the Court, on an application being lodged by the company or by any creditor or member of the company or, in the case of a company being wound up, by the liquidator, may order a meeting of the creditors or a class of creditors or of members of the company or a class of members to be summoned in such manner as the Court may direct.

(4) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting agrees to any compromise or arrangement, the compromise or arrangement if approved by order of the Court or, in the case of companies being wound up compulsorily, by the Court, shall be binding on all the creditors or class of creditors or on all members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up on the liquidator and the contributories of the company.

(5) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as is thought fit.

(6) An order under subsection (4) shall have no effect until an office copy of the order is lodged with the Registrar and the prescribed fee paid and, upon being so lodged, the order shall take effect on and from the date of filing

of the same or such earlier date as the Court may determine and as may be specified in the order.

(7) A copy of any order made under subsection (4) shall be annexed to every copy of the memorandum and articles of the company issued after the order has been made.

(8) Where any such compromise or arrangement in respect of a Registered Listed Company for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies has been proposed, the directors of the company -

- (a) if a meeting of the members of the company by resolution so directs, shall instruct such experts or a trustee company or both as are named in the resolution to report on the proposal and forward their report or reports to the directors as soon as may be; and
- (b) shall make such report or reports available at the registered office of the company in the Cook Islands for inspection by the shareholders and creditors of the company at least 14 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (3).

(9) A Registered Listed Company which defaults in complying with subsection (7) or (8) and every officer of a Registered Listed Company who is in default shall be guilty of an offence against this Act.

(10) Where no order has been made or resolution passed for the winding up of a Registered Listed Company and any such compromise or arrangement as is referred to in subsection (3) of this section has been proposed between the Registered Listed Company and its creditors, or any class of such creditors, the Court on such application lodged by the Registered Listed Company or by any member or creditor of the Registered Listed Company, may restrain further proceedings in any action or proceeding against the Registered Listed Company except by leave of the Court and subject to such terms as the Court imposes.

[Added at 1990/4]

126U. **Information as to compromise with creditors and members** - (1) Section 128 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where a meeting is summoned in respect of a Registered Listed Company under section 126T -

- (a) with every notice summoning the meeting which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating the material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement, there shall be included either such statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such statement.

(3) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to a trustee company when the trustee company is acting as trustee for the debenture holders as, under subsection (2), a statement is required to give with respect to the directors.

(4) Where a notice is given by a Registered Listed Company by advertisement includes a notification that copies of such statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the

statement.

(5) Each director of a Registered Listed Company and the trustee company on behalf of the debenture holders shall give notice to the company of such matters relating to himself and itself as may be necessary for the purposes of this section.

(6) Where default is made by a Registered Listed Company in complying with any requirements of this section, the Registered Listed Company and every officer of the Registered Listed Company who is in default shall be guilty of an offence against this Act.

(7) For the purpose of subsection (6), a liquidator of a Registered Listed Company and the trustee company acting on behalf of debenture holders shall be deemed to be officers of the Registered Listed Company.

(8) Notwithstanding the provisions of subsection (6), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any director or trustee company to supply the necessary particulars as to his or its interests.

[Added Act 1990/4]

126V. **Provisions for facilitating reconstruction and amalgamation of Registered Listed Companies** - (1) Section 129 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) In this section, except in so far as the context or subject matter otherwise indicates or requires,

"property" includes property rights and powers of every description.

(3) Where an application is made to the Court under section 126T for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any Registered Listed Company, or the amalgamation of any Registered Listed Company with any one or more companies (whether a Registered Listed Company or not) and that under the scheme the whole or any part of the undertaking or the property of any such company concerned in the scheme, in this section referred to as the "transferor company", is to be transferred to any other company, in this section referred to as the "transferee company", the Court may either by order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding-up, of the transferor company;
- (e) the provisions to be made for any persons, who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(4) Where an order made under this section provides for the transfer of property or liabilities then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become liabilities of, the transferee company, free in the case of any particular property if the order so directs from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(5) Where an order is made under this section, a Registered Listed Company in relation to which the order is made shall lodge an office copy thereof with the Court and pay the prescribed fee within 14 days after the making of the order and every Registered Listed Company which makes default in complying with this subsection and every officer of the Registered Listed Company who is in default shall be guilty of an offence against this Act.

[Added Act 1990/4]

126W. **Holders of 90 per cent of shares may acquire remainder** - (1) The holder or holders of not less than 90 per cent of the shares or any class of shares in a Registered Listed Company (hereinafter in this section referred to as the "purchasers") may give notice to the remaining shareholders or class of shareholders of the intention to acquire their shares on the terms (including the terms as to price, timing and settlement) set out in the notice. When such a notice is given the purchasers shall be entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice unless a remaining shareholder applies to the Court for an appraisal under subsection (2):

Provided that the foregoing provisions of this subsection shall not apply unless the purchasers offer the same terms to all holders of the shares whose acquisition is involved.

(2) Any shareholder to whom a notice has been given under subsection (1) may within 1 month of receiving the notice apply to the Court to appraise the value of the shares to be purchased from him and the purchasers shall be entitled to acquire the shares at the price so fixed by the Court:

Provided that the value appraised by the Court shall not be less than the value stipulated in the notice referred to in subsection (1) of this section.

(3) Within 1 month of the Court appraising the value of any shares under subsection (2) the purchasers shall be entitled either:

- (a) to acquire all the shares involved at the price fixed by the Court; or
- (b) cancel the notice given under subsection (1).

(4) Where the Court has appraised any shares under subsection (2) and the purchasers have prior to the appraisal acquired any shares by virtue of a notice under subsection (1) then within 1 month of the Court appraising the value of the shares if the price of the shares they have paid to any shareholder is less than that appraised by the Court they shall either:

- (a) pay to such shareholder the difference in the price they have paid to him and the price appraised by the Court; or
- (b) cancel the notice given under subsection (1) return to the shareholder any shares they have acquired and the shareholder shall repay the purchasers the purchase price.

- (5) No appeal shall lie from an appraisal by the Court under this section.
- (6) The costs of any application to the Court under this section shall be at the discretion of the Court.
- (7) In this section:

"price" shall include not only monetary price but also the monetary value of any shares, securities or other assets offered by the purchasers in exchange for the shares to be acquired.

[Added Act 1990/4]

126WA. **Sales other than at proper value** - (1) Section 191 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where any property, business or undertaking has been acquired by a Registered Listed Company for a cash consideration within a period of 2 years before the commencement of the winding-up of the company -

- (a) from a person who was at the time of the acquisition a director of the company; or
- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first mentioned company,

the liquidator may recover from the person or the company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(3) Where any property, business or undertaking has been sold by a Registered Listed Company for a cash consideration within a period of 2 years before the commencement of the winding-up of the company -

- (a) to a person who was at the time of the sale a director of the company; or
- (b) to a company of which at the time of the sale a person was a director who was also a director of the company first mentioned,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(4) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar consideration.

(5) In this section, "cash consideration" means any consideration payable otherwise than by the issue of shares.

[Added Act 1991/31]

126X. **Capital maintenance** - (1) Section 54A, 54B and 54C of this Act shall not apply to Registered Listed Companies.

(2) A Registered Listed Company may make payment of dividends to shareholders out of its profits, including for the avoidance of doubt any capital surplus.

[Added Act 1990/4; Amended Act 1991/31]

126XA. **Secrecy** - Subsections (3), (4), (5), (6), (7) and (8) of section 227 of this Act shall not apply to Registered Listed Companies.

[Added Act 1991/31]

126XB. **Asset protection** - Section 228B of this Act shall not apply to Registered Listed Companies.

[Added Act 1991/31]

126Y. **Investigation of the affairs of a Registered Listed Company and the protection of minorities** - (1) The Registrar may, at any time of his own volition or on the application of:

- (a) members holding not less than one-tenth of the shares in the Registered Listed Company, or
- (b) the relevant Minister or official or statutory body invested with the appropriate power in the jurisdiction where the Registered Listed Company is listed on a stock exchange who is responsible for the administration of the legislation or regulations as to the inspection of affairs of companies in that jurisdiction, appoint one or more inspectors within or outside the Cook Islands to investigate the affairs of the Registered Listed Company and to report thereon in such manner as he may direct.

(2) The application by the members of a Registered Listed Company shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for the investigation; and the Registrar may, before appointing an inspector require the applicants to give security for payment of the costs of the inquiry.

(3) If an inspector considers that any officer or agent of the Registered Listed Company or any other person is or may be in possession of any books or documents of or relating to the company or in possession of any information concerning the affairs of the company, he may require that person to produce to him any books or documents in his custody or power of or relating to the company and/or attend before him and otherwise to give him all assistance in connection with the investigation he is reasonably able to give; and it shall be the duty of that person to comply with the requirement.

(4) An inspector may examine on oath any such person as is mentioned in subsection (3) in relation to the affairs of the Registered Listed Company and may administer an oath accordingly.

(5) Where any officer or agent or person mentioned in subsection (3) refuses to produce any book or document that under this section it is his duty to produce, or to answer any question relating to the affairs of the Registered Listed Company, he shall be liable to a fine not exceeding \$10,000 and the Court convicting him may order him to produce to the inspector the books or documents in respect of which he was convicted.

(6) A person shall not be excused from answering a question put to him under this section by an inspector on the ground that the answer might tend to incriminate him but, where such person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings in relation to a charge of perjury in respect of the answer.

(7) A person who complies with any requirement under this section of an inspector investigating the affairs of a company shall not incur any liability to any person by reason only of that compliance, and a certificate by the inspector under his hand stating that he is investigating the affairs of the company and that the person to whom the requirement is

made is an officer, agent or employee, as the case may be, of the company or person whom he considers may be in possession of any information concerning its affairs shall be conclusive evidence of those facts.

(8) If an inspector appointed under this section to investigate the affairs of a Registered Listed Company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other company that is or has at any relevant time been -

- (a) a subsidiary or a holding company of the Registered Listed Company;
- (b) a subsidiary of its holding company;
- (c) a holding company of its subsidiary; or
- (d) substantially under the control of the same person as the Registered Listed Company,

he shall have power so to do, and shall report on the affairs of the other company so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the Registered Listed Company.

(9) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company shall include the bankers and solicitors of the company and any person employed by the company as auditor, whether any such person is or is not an officer of the company. A copy of any report of an inspector appointed under this section, signed by the inspector and counter-signed by the Registrar, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(10) Nothing in this section shall require disclosure to an inspector -

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a Registered Listed Company's bankers as such of any information as to the affairs of any of their customers other than the Registered Listed Company.

(11) Any person who fails to obey an order of the Court made under subsection (5) requiring the production of any books or documents shall be guilty of contempt of Court and may be punished accordingly.

(12) On the conclusion of the investigation the inspector shall report his opinion to the Registrar, and a copy of the report shall be forwarded by the Registrar to the Registered Listed Company and to the head functionary of any Stock Exchange on which the Registered Listed Company is listed and a further copy may in his discretion, at the request of the applicants for the investigation, be delivered to them. On receipt of the report the Registered Listed Company may at its discretion publish the report generally or the findings of the inspector thereunder.

(13) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Registrar directs that they be paid by the Registered Listed Company or its officers if substantial wrongdoing by such officers can be properly attributed to them in the activities of the Registered Listed Company.

(14) The exercise of any discretion by any inspector appointed pursuant to this section shall, upon application by the Registered Listed Company or any person affected by the exercise of the discretion, be subject to appeal to the Court which may make such orders as it sees fit.

[Added Act 1990/4]

126Z. **Letters of understanding** - (1) The Cook Islands Monetary Board may at any time of its own volition enter

into letters of understanding with the relevant Minister or statutory or regulatory authority invested with appropriate powers in any jurisdiction, with respect to them cooperating with each other in the investigation or other lawful regulation of Registered Listed Companies listed on the relevant Approved Stock Exchange in that jurisdiction.

(2) Where the Registrar considers it appropriate, he may apply to the Cook Islands Monetary Board for such Board to enter into the letters of understanding as contemplated by subsection (1) of this section and the Cook Islands Monetary Board shall consider such application of the Registrar and exercise its discretion as to whether the application of the Registrar should be approved.

[Added Act 1990/4]

126AA. **Alternative remedy to winding up in cases of oppressive or prejudicial conduct** - (1) Any member of a Registered Listed Company who complains that the affairs of the Registered Listed Company are being conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, or where a report has been made to the Registrar under section 126Y of this Act, the Registrar may make an application to the Court by petition for an order under this section.

(2) If on any such petition the Court is of opinion:

- (a) that the Registered Listed Company's affairs are being conducted as aforesaid; and
- (b) that to wind up the Registered Listed Company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the Registered Listed Company should be wound up;

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the Registered Listed Company's affairs in future, or for the purchase of the shares of any members of the Registered Listed Company by other members of the Registered Listed Company or by the Registered Listed Company and, in the case of a purchase by the Registered Listed Company, for the reduction accordingly of the Registered Listed Company's capital, or directing the Registered Listed Company to institute, prosecute, defend, or discontinue Court proceedings, or authorising a member or members of the Registered Listed Company to institute, prosecute, defend, or discontinue Court proceedings in the name of and on behalf of the Registered Listed Company, or otherwise.

(3) Where the conduct complained of ceases after an application has been made to the Court but before the Court has made an order under this section the Court may, notwithstanding that the matters complained of have been brought to an end, make any such order that the Court may have made if the conduct complained of had not ceased.

(4) Where an Order under this section makes an alteration in or addition to any Registered Listed Company's memorandum or articles, then, notwithstanding anything in any other provision but subject to the provisions of the order, the Registered Listed Company concerned shall not have power without the leave of the Court to make further alteration in or addition to the memorandum or articles as so altered or added to accordingly.

(5) A sealed copy of any order under this section altering or adding to, or giving leave to alter or add to, a Registered Listed Company's memorandum or articles shall, within 30 days after the making thereof, be delivered by the Registered Listed Company to the Registrar for registration; and if a Registered Listed Company makes default in complying with this subsection, the Registered Listed Company and every officer of the Registered Listed Company who is in default shall be liable to a default fine.

(6) In this section the term "member" includes the legal personal representatives of a deceased member, and

every person to whom shares of a member have been transferred by operation of law.

[Added Act 1990/4]

126BB. **Preservation of the books and assets of a Registered Listed Company** - (1) The Registrar in any case where he has made an order under subsection (1) of section 126Y or where he has made an application under subsection (1) of section 126AA may apply to the Court ex parte for an order that the assets, books and papers of the Registered Listed Company be preserved and not moved.

(2) If on any such application the Court is satisfied that there is a likelihood that the assets of the Company will be transferred or that the books and papers of the Registered Listed Company may be destroyed or removed it shall make an order that the assets of the Registered Listed Company shall not be transferred to any other person, removed from the Cook Islands or otherwise dealt with and that the books or papers of the Registered Listed Company shall not be destroyed or moved until a further order is made by the Court.

(3) Where a Registered Listed Company is served with an order under subsection (1) the Registered Listed Company may apply to the Court for the order to be discharged and the Court may:

- (a) confirm the order;
- (b) vary the order in such manner as it considers just; or
- (c) discharge the order;

and in any case make such orders as it thinks desirable for the preservation of the assets of the Registered Listed Company and the custody, inspection and copying of the books and papers of the Registered Listed Company.

(4) The Registered Listed Company and any officer of the Registered Listed Company who acts in contravention of an order of the Court made under subsections (2) or (3) shall be guilty of contempt of Court.

[Added Act 1990/4]

126CC. **True and fair accounts** - (1) Every balance sheet of a Registered Listed Company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a Registered Listed Company shall give a true and fair view of the profit and loss account of the company for the financial year.

(2) Subsection (1) of this section shall not apply to a Registered Listed Company's profit and loss account if -

- (a) the company has subsidiaries; and
- (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(3) Any person being a director of a Registered Listed Company who fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section commits an offence and shall, in respect of each offence, be liable on conviction to imprisonment for 6 months and to a fine of \$10,000:

Provided that -

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions were complied with and was in a position to discharge that duty; and
 - (b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.
- (4) For the purposes of this section, except where the context otherwise requires -
- (a) any references to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto; and
 - (b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

[Added Act 1990/4]

Division 3 - Deregistration

126DD. **Application for deregistration** - (1) Any Registered Listed Company may apply to the Registrar to cease to be registered pursuant to section 126E of this Act if the following requirements are satisfied:

- (a) all shareholders of the company have been notified;
- (b) a resolution approving the application has been passed by shareholders of the company who together hold in aggregate not less than 90 percent of the total votes of the members present (either in person or by proxy) and entitled to vote on that resolution and who together hold in aggregate not less than 75 percent of the total votes of all members of the company entitled to vote on such a resolution;
- (c) the company has not more than 45 days and not less than 30 days prior to lodging the application published a notice in an approved newspaper in each of the jurisdictions in which the company trades or conducts its business stating the company's intention to cease to be registered under section 126E of this Act;
- (d) the Registrar is satisfied that all regulatory or other requirements in the jurisdiction in which the Registered Listed Company maintains previously or previously maintained its primary listing have been satisfied.

(2) The application to the Registrar shall be made in the prescribed form and shall be lodged with the Registrar together with evidence to the satisfaction of the Registrar of the requirements prescribed in subsection (1) of this section and the prescribed fee.

[Added Act 1990/4]

126EE. **Registrar's duties** - (1) On compliance with the requirements for deregistration the Registrar shall

enter on the certificate of incorporation of the company or the certificate of continuance as the case may be a Minute that the company has ceased to be registered pursuant to section 126E of this Act and shall sign the Minute and state therein the date thereof.

(2) The completed Minute shall be conclusive evidence that all the requirements of this Division of this Part of this Act in respect of deregistration and of matters precedent and incidental thereto have been complied with and that the company has ceased to be a Registered Listed Company.

[Added Act 1990/4]

PART VII

ARRANGEMENTS AND RECONSTRUCTIONS

127. **Power to compromise with creditors and members** - (1) In this section, except in so far as the context or subject matter otherwise indicates or requires -

"arrangement" includes a reorganisation of the share capital of an international 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 any international company liable to be wound up under this Act.

(2) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Registrar, on an application being lodged by the company or by any creditor or member of the company or, in the case of a company being wound up, by the liquidator, may order a meeting of the creditors or a class of creditors or of members of the company or a class of members to be summoned in such manner as he may direct.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members of class of members present and voting either in person or by proxy at the meeting agrees to any compromise or arrangement, the compromise or arrangement if approved by order of the Registrar or, in the case of companies being wound up compulsorily, by the Court, shall be binding on all the creditors or class of creditors or on all the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Registrar or the Court, as the case may be, may grant his or its approval to a compromise or arrangement subject to such alterations or conditions as is thought fit.

(5) An order under subsection (3) shall have no effect until an office copy of the order is lodged with the Registrar and the prescribed fee paid and, upon being so lodged, the order shall take effect on and from the date of filing of the same or such earlier date as the Registrar may determine and as may be specified in the order.

(6) A copy of any order made under subsection (3) shall be annexed to every copy of the memorandum and articles of the company issued after the order has been made.

(7) Where any such compromise or arrangement in respect of an international company for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies had been proposed, the directors of the company -

(a) if a meeting of the members of the company by resolution so directs, shall instruct such experts or a

trustee company or both as are named in the resolution to report on the proposal and forward their report or reports to the directors as soon as may be; and

- (b) shall make such report or reports available at the registered office of the company in the Cook Islands for inspection by the shareholders and creditors of the company at least 14 days before the date of any meeting ordered by the Registrar to be summoned as provided in subsection (2).

(8) An international company which defaults in complying with subsection (6) or (7) and every officer of a company who is in default shall be guilty of an offence against this Act.

(9) Where no order has been made or resolution passed for the winding-up of a company and any such compromise or arrangement as is referred to in subsection (2) has been proposed between the company and its creditors, or any class of such creditors, the Registrar, in addition to any of his other powers, on an application lodged by the company or by any member or creditor of the company, may restrain further proceedings in any action or proceeding against the company except by leave of the Court in which the action or proceeding is pending or of the Registrar and subject to such terms as the Court or the Registrar imposes.

128. **Information as to compromise with creditors and members** - (1) Where a meeting is summoned in respect of an international company under section 127 -

- (a) with every notice summoning the meeting which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating the material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect of the like interests of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement, there shall be included either such statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to a trustee company when the trustee company is acting as trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by an international company by advertisement includes a notification that copies of such statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(4) Each director of an international company and the trustee company on behalf of the debenture holders shall give notice to the company of such matters relating to himself and itself as may be necessary for the purposes of this section.

(5) Where default is made by an international company in complying with any requirements of this section, the company and every officer of the company who is in default shall be guilty of any offence against this Act.

(6) For the purpose of subsection (5), a liquidator of an international company and the trustee company acting on behalf of debenture holders shall be deemed to be officers of the company.

(7) Notwithstanding the provisions of subsection (5), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any director or trustee company to supply the necessary particulars as to

his or its interests.

129. **Provisions for facilitating reconstruction and amalgamation of companies** - (1) In this section, except in so far as the context or subject matter otherwise indicates or requires, "property" includes property rights and powers of every description.

(2) Where an application is lodged with the Registrar or made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Registrar or the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any international company or companies or the amalgamation of any 2 or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme, in this section referred to as the "transferor company", is to be transferred to another company, in this section referred to as the "transferee company", the Registrar or the Court may either by order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interest in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding-up, of the transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the Registrar or the Court directs, dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(3) Where an order made under this section provides for the transfer of property or liabilities then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become liabilities of, the transferee company, free in the case of any particular property if the order so directs from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(4) Where an order is made under this section, an international company in relation to which the order is made shall lodge an office copy thereof with the Registrar and pay the prescribed fee within 14 days after the making of the order and every company which makes default in complying with this subsection and every officer of the company who is in default shall be guilty of an offence against this Act.

129A *[Repealed by 1991 No. 31]*

129B *[Repealed by 1991 No. 31]*

129C *[Repealed by 1991 No. 31]*

129D *[Repealed by 1991 No. 31]*

[Added Act 1990/4; Repealed Act 1991/31]

130. **Takeover powers** - Regulations may be made by the Queen's Representative for regulating takeover offers.

130A. **Power to acquire shares of shareholders dissenting from scheme or contract approved by majority** - (1) Where an offer involving the transfer of shares or any class of shares in an international company (in this section referred to as "the transferor company") to another person (in this section referred to as the "acquirer") has within 4 months after the making of the offer been accepted by the holders of not less than 90% in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the acquirer) the acquirer may, at any time within 2 months after the expiration of the said 4 months, give notice to any dissenting shareholder that the acquirer desires to acquire the dissenting shareholder's shares.

(2) When such a notice is given the acquirer shall, unless on an application made by a dissenting shareholder within 1 month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire all the shares of the dissenting shareholders on the terms on which under the offer, the shares of the approving shareholders are (or were) to be transferred to the acquirer.

(3) Where, in pursuance of any such offer, shares in an international company are transferred to an acquirer and those shares together with any other shares in the international company held by or for the acquirer at the date of the transfer comprise or include 90 percent in value of the shares in the international company or of any class of those shares, then:

- (a) the acquirer shall within 1 month from the date of transfer, give notice of that fact to the holders of the remaining shares of that class who have not assented to the scheme; and
- (b) any such holder may within 3 months from the giving of the notice to him, himself give notice requiring the acquirer to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares the acquirer shall be entitled and bound to acquire those shares on the terms on which under the scheme the shares of the approving shareholders were transferred to the acquirer, or on such other terms as may be agreed or, as the Court on the application of either the acquirer or the shareholder thinks fit to order.

(4) Where a notice has been given by the acquirer under subsection (1) of this section and the Court has not, on an application made by a dissenting shareholder, ordered to the contrary the acquirer shall, on the expiration of 1 month from the date on which the notice has been given, or, if an application to the Court by a dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the acquirer and on its own behalf by the acquirer, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the acquirer for the shares which by virtue of this section the acquirer is entitled to acquire, and the transferor company shall thereupon register the acquirer as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(6) In this section, except insofar as the context or subject matter otherwise indicates or requires:

"dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the acquirer in accordance with the scheme or

contract;

"nominee" includes any person acting jointly or in concert with the acquirer (including any related companies of the concert party who are or habitually act in concert with the acquirer).

[Added Act 1990/4; Amended Act 1991/31]

PART VIII

RECEIVERS AND MANAGERS

131. **Qualification for appointment as receiver** - (1) In this Part, "receiver" includes a receiver of the property of an international company or any part thereof or of the property of a foreign company registered in the Cook Islands and a manager appointer by or on behalf of a secured creditor or by the Court.

(2) Unless regulations made under this Act otherwise provide, an international company shall not be appointed a receiver unless it is an official liquidator.

132. **Directions and liability** - (1) A receiver appointed under the powers contained in any instrument may lodge an application with the Registrar for directions in relation to any matter arising in connection with the performance of his functions.

(2) A receiver shall be personally liable in any contract entered into by him in the performance of his functions except in so far as the contract otherwise provides and shall be entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

133. **Notification of appointment of receiver** - (1) If any person obtains an order for the appointment of a receiver or appoints such a receiver under any power contained in any instrument he shall, within 14 days after he has obtained the order or made the appointment, lodge notice of the fact with the Registrar.

(2) Where any person appointed receiver under the powers contained in any instrument ceases to act as such he shall within 21 days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

134. **Statement that receiver appointed** - (1) Where a receiver has been appointed in respect of an international company, every invoice, order for goods or business letter issued by or on behalf of the company by the receiver or liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement immediately following the name of the company that a receiver has been appointed.

(2) If default is made by an international company in complying with this section, the company and every officer and every liquidator of the company or receiver who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

135. **Provisions as to information where receiver appointed** -
of an international company -

(1) Where a receiver is appointed in respect

- (a) he shall forthwith send notice to the company of his appointment;
- (b) there shall within 14 days after receipt of the notice, or such longer period as may be allowed by the Registrar or by the receiver, be made out and submitted to the receiver in accordance with the provisions of section 136 a statement in the prescribed form as to the affairs of the company; and
- (c) he shall within 1 month after receipt of the statement -
 - (i) lodge with the Registrar a copy of the statement and of any comments he sees fit to make;
 - (ii) send to the company a copy of any such comments as aforesaid or, if he does not see fit to make any comments, a notice to that effect; and
 - (iii) where he is appointed by or on behalf of holders of debentures of the company, send to the trustees, if any, for those holders a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver or in the case of a receiver dying or ceasing to act except that, where that subsection applies to a receiver who dies or ceases to act before that subsection has been fully complied with, the references in paragraph (b) and (c) thereof to the receiver shall include references to his successor.

136. Special provisions as to statements made to receiver - (1) The statement as to the affairs of an international company required by section 135 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively and the date when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement as to the affairs of an international company shall be submitted by, and be verified by statutory declaration of, one or more persons who were at the date of the receiver's appointment the directors of the company or by such of the persons hereafter in this section mentioned as the receiver may require to submit and verify the statement, that is to say -

- (a) persons who are or have been officers;
- (b) persons who have taken part in the formation of the company at any time within 1 year before the date of the receiver's appointment;
- (c) persons who are in the employment of the company or who have been in the employment of the company within that year, and in the opinion of the receiver are capable of giving the information required;
- (d) persons who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making a statement and statutory declaration shall be allowed and shall be paid by the receiver, or his successor, out of his receipts such costs and expenses incurred in and about the preparation and making of the statement and statutory declaration as the receiver, or his successor, may consider reasonable subject to an appeal to the Registrar.

- (4) If any person makes default in complying with the requirements of this section, he shall be guilty of an

offence against this Act.

137. **Lodging of accounts of receivers** - (1) Every receiver shall -

- (a) within 1 month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within 1 month after he ceases to act as receiver, lodge with the Registrar a detailed account in the prescribed form showing -
 - (i) his receipts and his payments during each period of 6 months, or where he ceases to act as receiver during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing.
 - (ii) the aggregate amount of both receipts and payments during all preceding periods since his appointment; and
 - (iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment in the case of the first account, and at the expiration of every 6 months after this appointment, and where he has ceased to act as receiver at the date of his so ceasing, and his estimate of the total value of all assets of the company which are subject to that instrument; and
- (b) before lodging such account verify by statutory declaration accounts and statement referred to therein.

(2) The Registrar may of his own motion or on the application of an international company or a creditor cause the accounts to be audited by a registered company auditor appointed by the Registrar and for the purposes of the audit the receiver shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books kept by the receiver and any document or other record relating thereto.

(3) The Registrar may make an order for the payment of the costs of an audit ordered by him and, where he causes the accounts to be audited upon the request of the company or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

138 *[Amended Act 1989 / 22; Repealed by 1991 No. 31]*

PART IX WINDING-UP

Division 1 - Preliminary

139. **Modes of winding-up** - (1) An international company may be wound up either -

- (a) compulsorily; or
- (b) voluntarily.

(2) Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding-up apply to the winding-up of a company in either of those modes.

140. **The Government of the Cook Islands** - The provisions of this Part relating to the remedies against the property

of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Government of the Cook Islands in all its capacities.

141. **Certificate as to winding-up** - (1) The Registrar, upon application lodged by any person in the prescribed form and upon payment of the prescribed fee, shall issue a certificate stating whether at the date of the certificate an international company is being wound up, or a petition has been presented for the winding-up of the company and is pending.

(2) Notice of the issue and effect of such certificate may be given by telegram, cable, telex or wireless if the application for the certificate so requests and pays the costs thereof.

(3) Neither the Government of the Cook Islands nor the Registrar nor any officer or servant of the Government shall be liable by reason of any error, mistake, inaccuracy or delay in or in the giving of the certificate or notice by whatsoever cause or means arising, unless such error, mistake, inaccuracy or delay was wilful and fraudulent.

142. **Effect of winding-up** - (1) An international company shall from the commencement of the winding up cease to carry on business, except so far as, in the opinion of the liquidator -

- (a) is required for the beneficial winding up of the international company; or
- (b) subject to section 143, is required for the performance of any contract which the liquidator may not disclaim pursuant to section 192,

but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in the articles, continue until it is dissolved.

(2) On the commencement of the winding-up of an international company all the powers of the directors shall cease except so far as the liquidator of the company approves the continuance thereof.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, other than the transfer of a bearer share, and any alteration in the status of the members made after the commencement of the winding-up shall be void.

[Amended Act 1991/31]

143. **Avoidance of disposition of property** - Any disposition of the property of an international company including things in action made after the commencement of the winding-up shall, unless the Court otherwise orders, be void.

144. **Costs of winding-up** - (1) All proper costs, charges and expenses of an incidental to the winding-up of an international company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority of all other claims of whatsoever nature.

(2) The Court may, in the event of the assets being insufficient to satisfy such costs, charges and expenses make an order as to the payment out of the assets of such costs, charges and expenses in such order of priority as the Court thinks just.

145. **Custody and vesting of company's property** - On the commencement of any winding-up or when a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appear to be entitled and, if there is no liquidator, all the property of the company shall be in the custody of the Minister.

146. **Delivery of assets** - The Court may require any contributory, trustee, receiver, banker, agent or officer of an international company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the company is prima facie entitled.

147. **Avoidance of certain transactions** - Any attachment, sequestration, distress or execution put in force against the estate or effects of an international company after the commencement of its winding-up shall, unless the Court otherwise orders, be void.

148. **Pending proceedings** - After the commencement of the winding-up no action or proceeding shall be proceeded with or commenced nor shall any judgment be executed against an international company unless the Court otherwise orders.

149. **Power to stay winding-up** – (1) At any time after the commencement of a winding-up the Court may, on the application of any person, order that the winding-up be stayed.

(2) The order staying or refusing to stay the winding-up shall be made on such terms and conditions as the Court sees fit.

(3) A copy of every order under this section shall be lodged by the liquidator with the Registrar forthwith.

150. **Delegation to liquidator of Court's powers** - Unless rules of court otherwise provide, the Court may order that the powers and duties imposed on the Court by this Part in respect of -

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

may be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not without the special leave of the Court rectify the register of members or make any call.

151. **Liability as contributories of present and past members** - (1) Upon an international company being wound up, every present and past members shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves, subject to the other provisions of this section and to the following qualifications:

- (a) a past member shall not be liable to contribute if he has ceased to be a member for 1 year or more before the commencement of the winding-up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company

contracted after he ceased to be a member;

- (c) a past member shall not be liable to contribute unless the existing members have failed to satisfy the contributions required to be made by them in pursuance to this Act within 42 days from notice being given of such contributions in the manner prescribed;
- (d) upon a past member becoming liable to contribute pursuant to this subsection, he shall be immediately liable to pay the amount of such contribution to the liquidator of the company and thereupon shall be entitled to receive from the liquidator a certificate of the names of the existing members who have failed to contribute within the time provided by paragraph (c) and such certificate shall be conclusive evidence of the right of such past member to recover from such existing members jointly and severally the amount of the contribution paid by him.
- (e) no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable; and
- (f) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in the case of a composition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) Nothing in this section shall limit the liability of a director apart from his liability as a member in so far as that liability is imposed by this Act, the articles of the company or otherwise.

(3) Notwithstanding anything contained in this Act, in the articles of an international company or otherwise provided by law, no resident director of the company shall be liable to contribute otherwise than as a contributory upon the winding-up of that company for any cause whatsoever other than wilful misconduct, wilful default or wilful neglect.

(4) Notwithstanding anything in this Act or in the articles of an international company contained or otherwise provided by law, a trustee company shall not be liable to contribute to the assets of any company of which it is a member or past member as trustee upon a winding-up thereof otherwise than to the extent of the assets in its hand held, after all its proper charges and costs are deducted, for the *cestui que* trust; but such *cestui que* trust shall be liable and, if more than one, jointly and severally liable to pay the balance of any call remaining unpaid thereafter and the trustee company shall supply to the liquidator upon request all the information available to it relating to the *cestui que* trust.

152. **Nature of liability of contributory** - The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the time when calls are made for enforcing the liability.

153. **Contributories in case of death in bankruptcy of members** - (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of an international company in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

(2) If in the Cook Islands or elsewhere a contributory is adjudged bankrupt or insolvent or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories -

- (a) his trustee shall represent him for all the purposes of the winding-up and shall be a contributory accordingly; and

- (b) there may be proved against his estate the estimated value of his liability for future calls as well as those already made.

154. **Distribution of assets** - Subject to the provisions of section 153 and section 156 and subject to the provisions of this Act as to preferential payments, the property of an international company shall, on its winding-up, be applied in satisfaction of its liabilities equally, and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

[Amended Act 1986-87/26]

155. **Admission of claims to proof** - (1) No claim shall be admitted to proof in a winding-up unless -

- (a) a judgment of a court outside the Cook Islands in respect thereof could be registered in any Court of the Cook Islands and thereupon enforced in the Cook Islands; or
- (b) such claim would be enforceable by proceedings in a Court of the Cook Islands.

(2) Where the identity or address of any member is not known to him, the liquidator shall pay any money due to such member into the unclaimed moneys fund established by the Cook Islands for the purpose and the provisions of section 172 relating to payment into the unclaimed moneys fund shall apply mutatis mutandis to such moneys.

156. **Proof and ranking of claims** - (1) In the winding-up of an insolvent international company, the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force or provided for in respect of the winding-up of a domestic company and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the international company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

(2) Regulations may be made by the Queen's Representative to provide for the proof of claims in a winding-up of an international company but in the absence of such regulation the procedure to be followed shall be that which is for the time being provided for the proof of claims in the winding-up of a domestic company.

[Amended Act 1986-87/26]

157. **Claims of creditors and distribution of assets** - (1) Subject to subsection (2), the Court or, in the case of a voluntary winding-up the liquidator, may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The liquidator or, in a voluntary winding-up, the Registrar, as the case may be, may from time to time extend the date fixed pursuant to subsection (1) and fix a new date.

(3) Any surplus after payment of all liabilities of an international company, including the costs, charges and expenses of the winding-up, shall be distributed by the liquidator amongst the persons entitled thereto but, in the event of a dispute as to the persons entitled thereto, the liquidator after receiving notice of such dispute shall refer the dispute to the Court and shall be discharged by payment in accordance with the order of the Court.

(4) If no notice of dispute as to the persons entitled to a distribution of the surplus or any part thereof is received by the liquidator prior to making such distribution, whether interim or final, the liquidator shall be discharged from any liability to any person in respect of the amount so distributed but without prejudice to the rights of such person

to recover the same from the person receiving the distribution.

Division 2 - Compulsory winding-up

158. **Application for winding-up** - (1) An international company whether or not it is being wound up voluntarily, may be wound up compulsorily under an order of the Court.

(2) The Court may order the winding-up of an international company upon the petition of -

- (a) the company;
- (b) a creditor of the company, including a contingent or prospective creditor;
- (c) a contributory of the company;
- (d) the liquidator of the company;
- (e) the Minister; or
- (f) a director of the company,

or any two or more of those persons.

(3) No petition shall be filed in the Court unless it is accompanied by a copy thereof.

(4) The registrar of the Court, upon a petition being filed, shall forthwith deliver a copy thereof to the Registrar.

(5) Pending the making of an order consequent on any such petition the Court by order may appoint an official liquidator as provisional liquidator of an international company.

(6) Notice of any order made on or in respect of a petition shall immediately be lodged with the Registrar and served on the liquidator named in such order and on the international company named therein.

(7) Regulations may be made by the Queen's Representative restricting the grounds upon which a petition may be presented by any or all of the persons referred to in subsection (2) or the time within which petitions may be presented on any one or more grounds and specifying the circumstances in which a winding-up order may or may not be made or shall or shall not be made.

159. **Circumstances in which company may be wound up compulsorily** - (1) Subject to section 158, the Court may order than an international company be wound up if -

- (a) the company has by special resolution resolved that it be wound up under the order of the Court;
- (b) default is made by the company in lodging an annual or other statutory return or lodging a statutory report or in holding a statutory meeting;
- (c) the company acquires the whole of its own shares or has no member: Provided that it shall not be liable to be wound up under this paragraph so long as debentures of the kind referred to in section 57(12) are issued and not redeemed;

- (d) the company is unable to pay its debts;
- (e) directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole or in any other manner whatsoever which appears to be unfair or unjust to other members;
- (f) the Court is of the opinion that it is just and equitable that the company should be wound-up; or
- (g) on the petition of the Minister it appears that -
 - (i) the company has persistently been in breach of this Act;
 - (ii) the company has failed to pay any penalty or fee which under this Act it is liable to pay;
 - (iii) the company has failed to renew its certificate of incorporation for a period of 90 days after the same should have been renewed;
 - (iv) a director or officer of the company has failed to pay any penalty imposed on him under this Act;
 - (v) the company has failed to make good a default within 60 days after the service on it of a notice under the provisions of section 12(6) requiring it to do so; or
 - (vi) the company has been ordered by the Minister to cease carrying on business, or any part of its business, under the provisions of section 225.

(2) An international company shall be deemed to be unable to pay its debts if -

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$200 then due has served on the company by leaving at its registered office in the Cook Islands a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due and the company has for 60 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

(3) No debt which cannot be admitted in a winding-up may found a petition on the ground that the company is unable to pay its debts.

160. **Commencement of compulsory winding-up** - (1) Where before an order for compulsory winding-up of an international company a voluntary winding-up of the company has commenced, the compulsory winding-up of the company shall be deemed to have commenced when the voluntary winding-up commenced.

(2) In any other case, the compulsory winding-up of an international company shall be deemed to have commenced -

- (a) where a provisional liquidator has been appointed and an order for the company to be wound up is subsequently made, at the time when such appointment is made; or
- (b) where no provisional liquidator has been appointed, at the time when the order is made for the company to be wound up.

161. **Payment of costs** - Upon a winding-up order being made in respect of an international company, the liquidator shall, unless the Court otherwise orders, reimburse the petitioner out of the assets of the company the reasonable costs incurred by the petitioner in the proceedings for winding-up.

162. **Costs relating to winding-up** - Subject to the provisions of section 161, the costs of a winding-up petition shall be in the discretion of the Court.

163. **Copy of order to be lodged** - (1) The petitioner, within 30 days after the making of the winding-up order in respect of an international company, shall lodge a copy of the order with the Registrar and, other than where the petitioner is the Minister, pay the prescribed fee and shall cause a copy thereof to be served upon the company and within 14 days thereafter deliver to the liquidator a further copy together with a statement certified by a trustee company that the requirements of this section have been complied with.

(2) If default is made in complying with subsection (1) the petitioner shall be guilty of an offence against this Act.

164. **Appointment of liquidator** - (1) The Court, before making an order for the winding-up of an international company, shall appoint a liquidator of the company and the Court may require him to give such security as it thinks fit and that liquidator shall, unless the Court for special reasons orders otherwise, be an official liquidator.

(2) The Court may by order appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order and the provisional liquidator so appointed shall have and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be provided by the order appointing him or any subsequent order of the Court and any reference in this Act to a liquidator shall include a provisional liquidator.

165. **Validation of proceedings in voluntary winding-up** - Unless the Court otherwise orders, all things done in any voluntary winding-up proceeding the making of a winding-up order shall be deemed to have been validly done.

166. **Statement of affairs** - (1) Upon a winding-up order being made in respect of an international company, there shall be made out and verified in the prescribed form and manner and submitted to the liquidator a statement as to the affairs of the company as to the date of the winding-up order showing -

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the liquidator requires.

(2) A statement as to the affairs of an international company shall be submitted by one or more of the persons

who, at the date of the winding-up order, were directors of the company, or by such of the persons hereinafter mentioned as the liquidator, subject to the direction of the Registrar, requires, that is to say persons -

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within 1 year before the date of the winding-up order;
- (c) who are or have been within that period officers of or in the employment of a company which is, or within that period was, an officer of the company to which the statement relates; or
- (d) where a voluntary winding-up preceded the order, the liquidator in such winding-up.

(3) The statement shall be submitted within 60 days after the date of the winding-up order or within such extended time as the Court or the liquidator for good reason allows, and the liquidator within 7 days after its receipt shall cause a copy of the statement to be lodged with the Registrar.

(4) Any person making or concurring in making a statement as to the affairs of an international company subject to the regulations may be paid by the liquidator out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable.

(5) Any person who, without reasonable excuse, makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

167. Settlement of list of contributories and application of assets – (1) As soon as may be after making a winding-up order in respect of an international company, the Court shall settle a list of contributories and may rectify the register of members and, in the case of a company which issued bearer shares, or share warrants, enquire into and determine who are the members of the company in all cases where such rectification or enquiry is required for settling a correct list of contributories.

(2) Notwithstanding subsection (1), where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, it may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the obligations of others.

(4) The list of contributories when settled shall be prima facie evidence of the liabilities of the persons named therein as contributories.

[Amended Act 1991/31]

168. Report of liquidator - (1) The liquidator in a compulsory winding-up of an international company, as soon as practicable after receipt of the statement of affairs, shall submit a preliminary report to the Minister -

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion,

formation or failure of the company or the conduct of the business thereof.

(2) The liquidator if he thinks fit may make further reports stating the manner in which an international company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation and specifying any other matter which in his opinion it is desirable to bring to the notice of the Minister.

Division 3 - Voluntary winding-up

169. **Circumstances in which company may be wound up voluntarily** - (1) An international company which is able to pay or provide for the payment of its debts in full or if not in full to the satisfaction of its creditors, may be wound up voluntarily if the company has by special resolution resolved that it be wound up voluntarily and has lodged notice thereof with the Registrar.

(2) Upon the Registrar being satisfied that the notice of the resolution for the winding-up of the company has been lodged with him, he shall appoint an official liquidator to be liquidator of the company and thereupon the winding-up shall commence.

(3) The liquidator or the Registrar may give such notices and make such enquiries as they see fit to ascertain the identify of the holders of the shares in an international company and of the creditors thereof, and the costs and expenses of so doing shall be paid out of the assets of the company.

[Amended Act 1989/22]

170. **Declaration of solvency** - (1) Where it is proposed to wind up an international company voluntarily the directors of the company or, in the case of a company having more than 2 directors, a majority of the directors before the date on which the resolution for the winding-up of the company is passed, may make and lodge with the Registrar a written declaration to the effect that they have made an inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the date of the making of the declaration.

(2) There shall be attached to the declaration referred to in subsection (1) in relation to an international company a statement of affairs of the company showing in the prescribed form -

- (a) the assets of the company and the total amount expected to be realised therefrom;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding-up, made up to the latest practicable date before the making of the declaration.

(3) A declaration in relation to an international company so made shall have no effect for the purposes of this Act unless it is -

- (a) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding up; and
- (b) lodged with the Registrar before the date on which the resolution for the winding up of the company is passed.

(4) A director who makes a declaration in relation to an international company under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration shall be guilty of an offence against this Act.

(5) If an international company is wound up pursuant to a resolution for voluntary winding-up passed within a period of 5 weeks after the making of the declaration but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

[Amended Act 1989/22]

171. **Conversion of voluntary winding-up to compulsory winding-up** - Where an international company is being wound up voluntarily -

- (a) if the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full, or, if not in full, to the satisfaction of all the creditors, he shall forthwith give notice to the creditors of that opinion; and
- (b) upon such notice being given the winding-up shall continue as a compulsory winding-up and the liquidator shall forthwith lodge with the Court a notice to that effect in the prescribed form and thereupon the Court shall be deemed to have ordered the winding-up and to have appointed the liquidator.

172. **Payment of claims by liquidator of company in voluntary liquidation** - (1) Within 120 days after the commencement of the voluntary winding-up of an international company, or within such further time as the Registrar may allow, the liquidator shall make such enquiries as to claims and give such notices by advertisement or otherwise as the regulations provide, or, until such regulations are made, as the liquidator thinks fit, and thereafter the liquidator, subject to the retention of a fund sufficient to meet the costs, charges and expenses and future costs, charges and expenses of the liquidation, shall pay such claims in the liquidation of which he has actual notice and which he has admitted or which are admissible and without regard to other claims of which he has no notice or which are not admissible, shall distribute the surplus rateably amongst the contributories, in the case of those contributories whose identity is known to the liquidator by paying over to them their shares or otherwise accounting to them for their respective shares in the surplus, and in the case of those contributories whose identities are not known to the liquidator by paying over the shares of those contributories to the unclaimed moneys fund established by the Minister for that purpose.

(2) Upon making the payments referred to in subsection (1) the liquidator shall lodge with the Registrar a certificate to that effect and the international company named therein shall be thereupon dissolved.

(3) A claim by an unidentified contributory to recover his shares in the surplus paid into the unclaimed moneys fund shall become a claim against the Government of the Cook Islands to be paid out of the said fund provided that such a claim is made within 6 years from the date of the liquidator's certificate and prosecuted with due diligence thereafter, and after the expiration of 6 years without any claim having been made, or, if made within that time, without any claim having been allowed, the amount standing in the unclaimed moneys fund in respect of the unidentified contributory shall be transferred to and become part of the Public Account.

(4) The Minister may extend the time for making a claim upon the unclaimed moneys fund whether the time for making the claim has expired or not and whether or not the moneys in respect of which the claim has been made have been transferred to the Public Account, and, if any claim is allowed after the amount has been transferred to and become part of the Public Account it shall be paid out of, and be charge upon, the Public Account.

(5) Regulations may be made for the establishment and administration of a fund to answer claims of creditors either not admitted by the liquidator or barred by the dissolution of an international company prior to their submission to and allowance by the liquidator and prescribing the manner in which such claims may be made and determined and the amounts which may be claimed from such fund either in respect of a particular company or in respect of a particular claim and for enabling the recovery from contributories to whom payment or surplus have been made of the amount or amounts paid out of such fund and of costs, charges and expenses incurred in respect of the claim or claims made upon the fund: Provided that such regulations shall not permit recovery from a contributory unless proceedings to enforce recovery are commenced within a period of 9 years from the date of the liquidator's certificate.

Division 4 - Liquidators

173. **Vacancy in the office of liquidator** - If in the course of a winding-up a vacancy occurs by death, resignation or otherwise in the office of a liquidator, in the case of a compulsory winding-up the Court shall fill the vacancy by the appointment of a liquidator, provided that the liquidator so appointed shall, unless the Court for special reasons otherwise orders, be an official liquidator, and in the case of a voluntary winding-up the vacant office shall be filled by the Registrar in like manner.

174. **Replacement of liquidator** - Subject to rules of court, the Court may remove a liquidator and appoint another liquidator in his place.

175. **Validity of liquidator's acts** - (1) The acts of a liquidator shall be valid notwithstanding any defects that may be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of an international company's property made by a liquidator notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, shall be valid in favour of any person taking such property bona fide and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to such person.

(4) For the purposes of this section a disposition of property shall be taken as including a payment of money.

176. **General provisions as to liquidators** - (1) A person or company appointed to be the liquidator of an international company may resign.

(2) In the event of an international company or contributory seeking the removal of a liquidator and such removal being opposed by the liquidator, the question shall be referred to the Court and upon cause being shown the Court may order that the said liquidator be removed and thereupon the said liquidator shall cease to be the liquidator of the company.

(3) Upon discovery of any defect in the appointment or qualifications of a liquidator the Minister may by notice in the Gazette validate such appointment and the liquidator shall thereupon be deemed for all purposes to have been validly appointed on and from such date as may be specified in the notice.

177. **Powers of liquidators** - (1) A liquidator may, subject to regulations made under this Act and, in a compulsory winding-up of an international company, subject to any order or rule of the Court -

(a) carry on the business of the company so far as is necessary for the beneficial winding-up thereof;

- (b) subject to the provisions of this Act, pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having, or alleging themselves to have, any claim present or future, certain or contingent, ascertained or sounding only in damages, against the company or whereby the company may be rendered liable;
- (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof;
- (e) bring or defend any action or other legal proceedings in the name and on behalf of the company;
- (f) appoint a barrister, solicitor, a trustee company, an accountant or some other expert to assist him in his duties;
- (g) sell the real and person property and choses in action of the company by public auction, public tender or private contract with power to transfer the whole to any person or company or to sell the same in parcels;
- (h) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;
- (i) prove rank and claim in the insolvency, bankruptcy or liquidation of any contributory or debtor for any balance against his estate, and receive dividends in the insolvency, bankruptcy or liquidation in respect of that balance as a separate debt due from the insolvent, bankrupt or company in liquidation and rateably with the other separate creditors;
- (j) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.
- (k) raise on the security of the assets of the company any monies required;
- (j) take out or cause to be taken out probate or letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due for the purposes of enabling the liquidator to take out or cause to be taken out the probate or letters of administration or recover the money shall be deemed due to the liquidator himself;
- (m) appoint an agent or expert to do any business or carry out any work or give any recommendation or advice which the liquidator is unable or unqualified to do himself and to pay the proper charges of such agents or experts for the doing of such work and to pay the proper expenses incurred in and incidental to the doing of such work; and
- (n) do all such other things as are necessary or convenient and reasonably for winding-up the affairs of

the company and distributing its assets.

(2) If any creditor or contributory of an international company contends that the liquidator should do or refrain from doing any of the acts or things hereinbefore mentioned or is aggrieved by any act or decision of the liquidator, such person may submit to the Registrar his contention in respect thereof, setting forth the ground therefor and if the Registrar is of the opinion that the contention is one which might be reasonably sustained, whether the Registrar would himself sustain it or not, he shall so inform the liquidator and the contention shall thereupon be referred to the Court and the liquidator shall act in accordance with the order of the Court, provided however that, unless the Court otherwise orders, the liquidator shall be entitled to his costs and expenses of the proceedings out of the assets of the company and, if prior to the contention being referred to the Court the liquidator certifies to the Court that there is a doubt whether the assets of the company will be sufficient to satisfy such costs after providing for all other then known expenses and outgoings, the Court shall not then proceed with the hearing until full security for such costs and expenses has been provided by the applicant and such security to the extent to which the liquidator is unable to satisfy such costs and expenses from the assets of the company, shall answer for the same and in any event shall answer for the same in the first instance; and the Court may order the applicant to pay to the company the whole of the liquidator's costs and expenses or such part thereof as it thinks fit, and may order the liquidator or the company to pay the whole of the applicant's costs or expenses or such part thereof as it thinks fit.

178. **Exercise and control of liquidator's powers** - (1) Subject to the other provisions of this Act, the liquidator in the administration of the assets of an international company and in the distribution thereof amongst its creditors shall have regard to any directions given by the creditors or contributories at any meeting or otherwise in accordance with this Act.

(2) The liquidator may summon meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories and all such meetings shall be summoned and held in accordance with the regulations, if any, made in that behalf.

(3) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the affairs and property of an international company and the distribution of its assets.

179. **Payment by liquidator into bank** - (1) Every liquidator shall pay the monies received by him into a bank account opened by him for the purposes of his activities as liquidator and shall do so in the manner and at the times and into the bank account prescribed.

(2) For the purposes of this section, "bank account" means an account with a company licensed under the Off-Shore Banking Act 1981, or with any company or institution carrying on banking business outside the Cook Islands and approved for the purposes of this section by the Registrar.

180. **Committees of Inspection** - Regulations may be made by the Queen's Representative relating to the appointment, constitution, powers, duties, remuneration and removal of committees of inspection and for the appointment, the removal and the substitution of the members thereof.

181. **Sale of property by liquidator other than for cash** - (1) In any winding-up of any international company the liquidator shall have power to sell, transfer or dispose of the business or property of the company in whole or in part in consideration of or in part consideration of the transfer, allotment or sale to him of shares, debentures, policies, choses in action or other like interests in other companies or in another company for distribution amongst the members in the winding-up, without it being necessary for the liquidator to receive such number of such shares, debentures, policies, choses in action and the like as to permit of an exactly equal distribution amongst the members and the liquidator shall have power to transfer by way of distribution some or all of such shares, debentures, policies, choses in action or the like

to two or more members as tenants in common, and he may enter into any other arrangement whereby the members of the company in lieu of receiving cash shares debentures policies choses in action or other like interests, or in addition thereto, may participate in the profits of or receive any other benefit from some other company or companies and any such transfer, sale, allotment or arrangement shall be binding on the members of the company: Provided, however, that notice of the liquidator's intention in that behalf shall be given by him to such of the members of the company whose identities are known to him and if, within 21 days from the giving of such notice, 25 per centum of those to whom notice has been given dissent from the course proposed, the liquidator shall either abstain from carrying out the course proposed or purchase the interest of the dissenters at a price to be determined by agreement or by the Court.

(2) In entering into any contract with another company or other companies for the sale of the whole or part of the business or property of the company in return for the transfer, allotment or sale of shares, debentures, policies, choses in action or other like interests or for any right to participate in profits of such other company or companies or to receive any other benefit from such other company or companies, the liquidator may make the dissent of the said 25 per centum of members as aforesaid a condition precedent or a condition subsequent to the contract and in the absence of the expression of such a condition or in event of it being doubtful whether such a condition is precedent or subsequent, there shall be imputed into the contract a condition precedent to the said effect.

182. **Liquidator's books** - Every liquidator shall keep proper books in which he shall cause to be made entries of minutes of proceedings at meetings and of resolutions by creditors or contributories and of such other matters as are prescribed and any creditor entitled to prove in the liquidation or any contributory may, with the approval of the Registrar, personally or by his agent inspect such books.

183. **Liquidator's returns** - Regulations may be made by the Minister prescribing what returns, accounts, reports and information shall be lodged with the Registrar by a liquidator and providing for the costs and fees of and incidental to the same to be paid or provided for.

184. **Invoices etc. of company in liquidation** - (1) Where an international company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the same or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words "in liquidation" added after the name of the company where it first appears therein.

(2) If default is made by an international company in complying with this section, the company and every officer and liquidator of the company and every receiver or manager who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

185. **Books of liquidator and company** - (1) Where an international company is being wound up or has been wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at a subsequent to the commencement of the winding-up of the company as between the contributories of the company shall be prima facie of the truth of all matters purporting to be therein recorded.

(2) Where an international company has been wound up, the liquidator shall return the books and papers to the resident secretary of that company who shall ensure that those books and papers are retained by a trustee company for a period of 6 years from the commencement of the winding-up. After the expiration of the 6 years the books and papers may be destroyed.

(3) The Registrar may cause any additional records or registers to be destroyed after the expiration of 6 years from the commencement of the winding-up.

(4) No responsibility shall rest on the liquidator of an international company or the Registrar by reasons of any book or paper of the company being mislaid or not being forthcoming to a person claiming to be

interested therein.

[Amended Act 1991/31]

186. **Investment by liquidator** - Whenever the cash balance standing to the credit of an international company in liquidation is in excess of the amount which in the opinion of the liquidator is required for the time being to answer the demands in respect of the company, the liquidator may invest the sum or any part thereof in any investment approved in writing by the Minister.

187. **Liquidator's expenses** - (1) Unless expressly directed so to do by the Court, a liquidator shall not be liable to incur any expense in relation to the winding-up of an international company unless there are sufficient available assets to meet such expense.

(2) The Court on the application of a creditor or contributory may direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and gives security to secure the amount of the indemnity in a form acceptable to the liquidator.

Division 5 - Dissolution

188. **Dissolution** - (1) As soon as the affairs of an international company are fully wound up, the liquidator, unless the winding-up is governed by section 172, shall prepare an account showing how the winding-up has been conducted and the property of the company as been disposed of and, unless the Registrar otherwise orders, shall send a copy of the account to each member of the company of whose name and address he is aware and, where the creditors of the company have not been paid in full or had their debts compromised, also to each creditor of whose name and address he is aware and shall lodge with the Registrar and, in the case of a compulsory winding-up, file in the Court a copy of the account together with a statement of the date upon which it was despatched as aforesaid.

(2) On the expiration of 3 months after the lodging of a return with respect to an international company with the Registrar, the company shall be dissolved.

(3) Notwithstanding the provisions of subsection (2), the Registrar or, in the case of a compulsory winding-up, the Court, on application by the liquidator or by any other person who appears to the Registrar or the Court, as the case may be, to be interested or, in the case of a compulsory winding-up, by the Registrar, may make an order deferring the date at which the dissolution of an international company is to take effect for such time as the Registrar or the Court, as the case may be, thinks fit but not exceeding 12 months and, in special circumstances, may extend the period upon further applications for further periods of not more than 6 months.

(4) Except where the applicant is the Registrar, the person on whose application an extension is granted under subsection (3) within 14 days after the granting of the extension shall lodge with the Registrar a copy of the order of the Registrar or the Court, as the case may be, which shall set forth the name of the applicant and of the company and the date upon which the extension was granted and the period for which it was granted and shall pay the prescribed fee therefor and, if the applicant is not the liquidator, shall send a copy thereof to the liquidator and in default thereof the extension shall cease and the company shall forthwith be dissolved upon the date upon which it would have been dissolved if the order had not been made.

(5) Where an extension is granted in relation to the dissolution of an international company upon the application of the Registrar, he shall forthwith note the order of the Court upon his records relating to the company and shall send a copy thereof to the liquidator.

(6) Upon the dissolution of an international company the liquidator, unless the Court upon the applications of

any interested person or of its own motion otherwise orders prior to the dissolution, shall be released from all claims by the contributories, the creditors and the company.

189. **Accountability of liquidator** - (1) The Court, if it sees fit, may cause a report to be made on any accounts of the liquidator by a registered company auditor appointed by the Court for that purpose and pursuant to such report may issue a summons requiring the liquidator to appear before it and upon the hearing of such summons may make such order or give such directions as it thinks fit, including an order for the liquidator to make good any loss suffered by an international company resulting from his wilful misconduct, wilful default or wilful neglect.

(2) When the liquidator has realised all the property on an international company or so much thereof as can in his opinion be realised without needlessly protracting the liquidation or incurring expense without sufficient warrant, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories amongst themselves and made a final return, if any, to the contributories, he may apply to the Court -

- (a) for a declaration that he be released; or
- (b) for a declaration that he be released and the company dissolved.

(3) When the liquidator has resigned or been removed from his office he may apply to the Court for a declaration that he has been released.

(4) Upon an application by a liquidator for a declaration that he be released, the Court in granting the application may impose such terms and conditions as it thinks fit.

(5) The liability of an official liquidator shall be limited to liability for wilful misconduct, wilful default and wilful neglect.

(6) Upon being released, the liquidator shall cease to hold office.

(7) Where a liquidator is released under the provisions of this section, a copy of the declaration releasing the liquidator shall, within 60 days after the making thereof, be lodged by the liquidator with the Registrar.

Division 6 - Effect on other transactions

190 **Voidable transactions** - (1) Every conveyance, assignment, transfer or disposition of property, or any charge thereon made, and every payment or obligation incurred, and any judicial proceeding taken or suffered (all of which shall be referred to in this section as "transactions") by an international company unable to meet its obligations to creditors as they fall due which has the effect of, and was made with a view to, giving any person (whether a creditor, member or any surety or guarantor or trustee for the same or any other person) a preference over any other person which that person would not have had in any winding up of that international company on the date of giving effect to that transaction shall, subject to subsections (2) and (3), be deemed to be voidable at the absolute discretion of a liquidator, if the international company making, taking, paying or suffering the same is commenced to be wound up within 3 months of that transaction being given effect to or is struck off and dissolved within 1 year of that transaction being given effect to.

(2) A liquidator's entitlement to exercise the discretion referred to in subsection (1) shall expire 2 years after the date of the commencement of the winding up of the international company.

(3) In respect of any transaction set aside as a voidable preference pursuant to this section the liquidator and any creditor shall, on repayment, have the same remedies against any guarantor or surety (and against any property

securing the same) as he would have had if the international company had not entered into the transaction. No proceeding shall, however, defeat the interests of a bona fide purchaser for value of property (or other bona fide person with an interest in such property).

(4) Any such proceedings referred to in subsection (3) may be taken directly against any such guarantor or surety without the need to join the creditor, or against that creditor without the need to join any such guarantor or surety.

190A. **Contracts avoiding rules as to distribution of assets** - A contract shall be unenforceable if it has the purpose of avoiding the rules as to the distribution of assets as specified by this Act but only if:

- (a) any party to the contract was a member, or officer, of that international company; and
- (b) that particular party seeks to enforce, or to rely upon, the contract.

191. **Sales other than at proper value** - (1) Where any property, business or undertaking has been acquired by an international company for a cash consideration within a period of 1 year before the commencement of the winding-up of the company -

- (a) from a person who was at the time of the acquisition a director of the company; or
- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first mentioned company,

the liquidator may recover from the person or the company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by an international company for a cash consideration within a period of 1 year before the commencement of the winding-up of the company -

- (a) to a person who was at the time of the sale a director of the company; or
- (b) to a company of which, at the time of the sale a person was a director who was also a director of the company first mentioned, the liquidator may recover from the person or the company to which the property, business or undertaking includes the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar consideration.

(4) In this section, "cash consideration" means any consideration payable otherwise than by the issue of shares.

[Amended Act 1991/31]

192. **Disclaimer of onerous property** - (1) Where -

- (a) any part of the property of an international company consists of -
 - (i) any estate or interest in land burdened with onerous covenants;

- (ii) shares or stocks in companies;
 - (iii) unprofitable contracts; or
 - (iv) any other property that for whatever reason, is unprofitable or not readily saleable; and
- (b) the mere interest in that property binds the international company, or is likely to bind the international company, to the payment of any sum of money or the disposition of any assets of the international company the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relationship thereto, subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding up, may disclaim the property and shall forthwith send a copy thereof, to every person affected thereby of whom he has actual notice; but where any such property has not come to the knowledge of the liquidator within 1 month after the commencement of the winding up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof.

(2) A disclaimer by the liquidator of an international company shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as it is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) A liquidator of an international company shall not be entitled to disclaim any property if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within the period of 2 months after the receipt of the application, given notice to the applicant that he intends to disclaim and, in the case of a contract, if the liquidator after such an application in writing does not within that period disclaim the contract, the liquidator shall be deemed to have adopted it.

(4) Any interested person aggrieved by any disclaimer by the liquidator under this section within 60 days of the signature of that disclaimer, may apply to the Court to have the disclaimer set aside and, if the Court so orders, the disclaimer shall be set aside and shall be void ab initio.

(5) A party to a contract with an international company in respect of which winding-up has commenced, which contract has not been disclaimed by the liquidator, either with or without requiring the liquidator to elect whether he disclaims the contract, may require the liquidator to state whether he intends to endeavour to perform the contract so far as the same remains to be performed on the part of the company and, in the event of the liquidator failing to state within 2 months after receipt of a notice by him requiring him so to do that he so intends, that party, with the consent of all other parties, if any, other than the liquidator, without being liable in damages for rescission of the contract, may rescind the contract and any amount recoverable by the company pursuant to such rescission may be thereupon recovered by the liquidator from the other party or parties and any amount recoverable from the company pursuant to such rescission may be proved for in the winding-up by such other party or parties: Provided however that a liquidator shall not become personally liable for the performance of the contract by reason only that he states whether or not he proposes to endeavour to perform it, unless he makes such statement fraudulently.

(6) Upon application by any person interested in any property the subject of a disclaimer, the Court may make an order vesting the property in the person entitled thereto subject to such terms and conditions, if any, as it thinks fit.

[Amended Act 1991/31]

Division 7 – Offences

193. **Offences by officers of companies in liquidation** - (1) Every person who, being a past or present officer of an international company which is being wound up -

- (a) does not to the best of his knowledge and belief fully, and truly discover to the liquidator all the property real and personal of the company and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator or as he directs -
 - (i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within the 12 months next before the commencement of the winding-up or at any time thereafter -
 - (i) has concealed any part of the property of the company to the value of \$50 or upwards, or has concealed any debt due to or from the company;
 - (ii) has fraudulently removed any part of the property of the corporation to the value of \$50 or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to parting fraudulently with, altering or making any omission in, any document affecting or relating to the property of affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for; or
 - (vii) has obtained on credit, for or on behalf of the company under the false pretence that the company is carrying on its business or has a current certificate of incorporation, any property which the company has not subsequently paid for.

(viii)[Repealed]

- (d) wilfully makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of 1 month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the

company;

- (g) within the 6 years next before the commencement of the winding-up or at any time thereafter has attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious losses or expenses; or
- (h) within the 6 years next before the commencement of the winding-up or at any time thereafter has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

shall be guilty of an offence against this Act.

(2) It shall be a defence to a charge under subsection (1)(a), (b), (d) or (c)(i), (vii) or (viii) if the accused proves that he had no intent to defraud and to a charge under subsection (1)(c)(iii) or (iv) or (f) if he proves that he had no intent to conceal the state of affairs of an international company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(c)(viii) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in the those circumstances shall be guilty of an offence against this Act.

(4) Any person who within the Cook Islands offers any shares or debentures to the public or to any member of the public, not being a company for subscription or purchase, shall be guilty of an offence unless the Minister has given prior consent in writing to his doing so.

(5) Every person who in any return, report, certificate, balance sheet or other documents required by or for the purposes of this Act wilfully makes a statement false in any material particular knowing it to be false shall be guilty of an offence against this Act.

[Amended Act 1991/31]

194. **Frauds by officers** - Any person who, while an officer of an international company which is subsequently wound up -

- (a) by false pretences or by means of any other fraud has induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence against this Act.

195. **Liability where proper accounts not kept or debts incurred without reasonable expectation of payment** -

(1) Where an international company which is a Registered Listed Company pursuant to Part IVA of this Act is wound up and it is shown that proper books of accounts were not kept by the company throughout the period of 2 years

immediately preceding the commencement of the winding-up or the period between the incorporation of the company and the commencement of the winding-up, whichever is the shorter, every officer who is in default, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, shall be guilty of an offence against this Act.

(2) An officer or former officer of an international company which is a Registered Listed Company pursuant to Part VIA of this Act which is being, or has been, wound up who was knowingly a party to the contracting of a debt provable in the winding-up and had, at the time the debt was contracted, no reasonable or probable ground or expectation, after taking into consideration the other liabilities, if any, of the company being able to pay the debt, shall be guilty of an offence against this Act.

[Amended 1991/31]

196. **Personal liability for debts** - Any person who is knowingly a party to the carrying on of the business of an international company which is a Registered Listed Company pursuant to Part VIA of this Act with intent to defraud creditors shall be guilty of an offence and shall be personally liable for the debts of the company.

[Amended 1991/31]

Division 8 - Defunct companies

197. **Defunct companies** - (1) Where the Registrar has reasonable cause to believe that an international company is not the holder of a current certificate of incorporation, he may send to the company by prepaid registered post addressed to the registered office of the company in the Cook Islands a letter to that effect and stating that if an answer showing cause to contrary is not received within 2 months from the date thereof, the Registrar will strike the name of the company off the register.

(2) At the expiration of the time specified in the letter forwarded to an international company under subsection (1), or such further time as the Registrar seems fit, he may unless cause to the contrary is previously shown, strike the name of the company off the register and the company shall be thereupon, subject to subsection (3A), be dissolved; however -

- (a) the liability, if any, of every officer and member of the company shall continue for a period of two years following the date upon which the company is dissolved and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the liability of the company to be wound up pursuant to the provisions of this Act.

(2A) Upon the request of an international company, such request having been approved by a special resolution of the members and being accompanied by a statutory declaration signed by all of the directors to the effect that the international company no longer carries on business and has no outstanding liabilities to creditors and no assets (other than assets represented by cash) the Registrar shall, unless he has cause to believe that the contents of the directors' statutory declaration are incorrect, strike the name of the international company off the register and the international company shall thereupon be dissolved and the provisions of subsection (2) shall mutatis mutandis apply.

(3) Where such statutory return and documents as the Registrar may direct have been lodged and the prescribed costs and fees paid, upon application in the prescribed form the Registrar, if he is satisfied that no person will be prejudiced and that due cause has been shown, may restore to the register the name of an international company which has been struck off but such restoration shall be made only upon payment of all costs, fees, charges and any

arrears thereof to the Registrar and to all other persons who would have been entitled to receive them if the company had not been struck off.

(3A) Notwithstanding section 199(1), upon the Registrar restoring to the register the name of an international company pursuant to subsection (3) –

(a) the international company shall be deemed to have continued in existence as if its name had not been struck off, and unless the Registrar at the time of restoration orders to the contrary, the international company and all other persons shall be deemed to be in the same position as nearly as may be as if the international company had not been struck off; and

(b) any property, real or personal, including choses in action and whether within or outside of the Cook Islands that has pursuant to section 199(1) become vested in the Registrar, shall be deemed notwithstanding section 199(1), never to have been so vested, other than –

- (i) property actually sold, otherwise disposed of or dealt with by the Registrar pursuant to section 199(2), which property shall remain the property of any bona fide purchaser or recipient; and
- (ii) property the subject of an order of the Court, which property shall be deemed to have been dealt with according to the order.

(4) Where costs, charges or fees or arrears, if any, thereof are paid under subsection (3) in respects of any international company which is being wound up, such costs, charges, fees and arrears shall be deemed to be costs of the liquidation.

(5) Notwithstanding subsection (1) and (2), where an international company or an officer of an international company notifies the Registrar in writing that the company does not intend to renew the certificate of incorporation of the company, the Registrar, when the period of validity of the most recent certificate of incorporation has expired, may forthwith strike the name of the company off the register without having given to the company any notice of his intention to do so; and the striking-off of the name of the company shall be deemed to have been done under subsection (2).

(6) When an international company has been struck off the resident secretary shall ensure that the books and papers are retained by a trustee company for a period of six years from the striking off, but thereafter the books and papers may be destroyed.

(7) The Registrar may cause any additional records or registers to be destroyed after the expiration of six years from the striking off.

[Amended Act 1991/31; Act 2006/3]

198. **Registrar to act as representative of defunct company in certain events** - (1) Where after an international company has been dissolved it is proved to the satisfaction of the Registrar -

- (a) that the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
- (b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing,

the Registrar may as representing the company or its liquidator under the provisions of this section do or cause to be done any such act.

(2) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if an international company if existing had duly executed such instrument or document.

199. **Outstanding assets of defunct company to vest in Registrar** - (1) Subject to section 197(3A), where, after an international company has been dissolved there remains any outstanding property, real or personal, including choses in action, and whether within or outside the Cook Islands which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property except uncalled capital, for the purposes of the following subsections and notwithstanding any enactment or rule of law to the contrary, by the operation of this section shall be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) The Registrar may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person who may have an interest in the same in such manner, for such consideration and upon such terms and conditions as he thinks fit with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this section shall be applied first in defraying all costs, expenses, fees and commissions incidental thereto and thereafter shall be paid into the Public Account.

(4) Any action for or in respect of any moneys paid into the Public Account under the provisions of this section shall be against the Registrar as the nominal defendant and shall be instituted within 6 years next after the dissolution of an international company, after which time no such action shall be instituted and the claim shall be absolutely barred.

[Amended Act 2006/3]

PART X FOREIGN COMPANIES

200. **Interpretation** - (1) This Part applies to a foreign company only if it has a business or is carrying on business within the Cook Islands and is not registered under either the Companies Act 1970-71 or the Development Investment Act 1977.

(2) "Carrying on business" includes -

- (a) establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in the Cook Islands as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; and
- (b) in the case of a foreign company in respect of which the Minister has by notice in the Cook Islands Gazette so specified, suffering or permitting the company's own shares to be dealt with, issued, transferred or made the subject of options or agreements within the Cook Islands or permitting or suffering dealings, transfer or agreements to sell or purchase or options therefor in respect of securities, notes or rights issued by it to the public, or by reason of which the public might acquire an interest in the company, to be made within the Cook Islands,

and "to carry on business" has a corresponding meaning.

(3) Notwithstanding subsection (2), a foreign company shall not be regarded as carrying on business within the Cook Islands by reason only of the fact that within the Cook Islands it -

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) conducts one isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated more than once;
- (c) enters into transaction or dealings with one or more international companies or foreign companies of a nature which do not entail the physical establishment of a place of business in the Cook Islands.

(4) A foreign company shall not have a place of business in the Cook Islands or carry on business in the Cook Islands for longer than 1 month unless it is registered as a foreign company under this Part and a foreign company which acts and every officer thereof who permits the foreign company to act in contravention of this subsection shall be guilty of an offence against this Act.

(5) A foreign company shall not carry on in the Cook Islands any business which a company incorporated under this Act may not carry on.

(6) The Minister may, by notice in the Cook Islands Gazette, order that any foreign company be restricted from carrying on any specified business within the Cook Islands and may by notice in the Cook Islands Gazette impose conditions subject to which any specified business may be carried on by a foreign company within the Cook Islands.

- (7) Registration of any company under Part X shall be conclusive of the fact that, for all of the purposes of this Act, the company is validly incorporated outside the Cook Islands.

[Amended Act 1988/6; Act 1989/22; Act 1991/31]

201. **Documents etc. to be lodged by foreign companies** - (1) Every foreign company shall, within 1 month after it establishes a place of business or commences to carry on business within the Cook Islands, lodge with the Registrar for filing -

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
- (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;
- (c) a list of its directors and officers containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors and secretaries of a company incorporated under this Act;
- (d) where a list includes directors resident in the Cook Islands who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of a foreign company or executed

on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name of a trustee company that is authorised to accept on its behalf service of process and any notices required to be served on the company;

- (f) the address of the principal office of the trustee company which is to be the registered office of the foreign company in the Cook Islands; and
- (g) a declaration in the prescribed form setting out particulars of its authorised capital,

and the Registrar shall register the company under this Part by filing the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Every foreign company shall have as its registered office in the Cook Islands the principal office of a trustee company.

(4) On the registration of a foreign company under this Part or the lodging with the Registrar of particulars of a change or alteration of name and on payment of the prescribed fee, the Registrar shall issue a certificate in the prescribed form under his hand and seal which certificate shall be *prima facie* evidence in all Courts of the particulars mentioned in the certificate and shall be valid for a period of 12 months from the date of issue and shall on payment of the prescribed fee be renewable from time to time for further periods of 12 months and the provisions of section 14(4), (5) and (6) shall apply *mutatis mutandis*.

202. Return to be lodged where documents etc, altered - (1) Where any change or alteration is made in -

- (a) the charter, statute, memorandum or articles of the foreign company or other instrument lodged with the Registrar;
- (b) the directors of the foreign company;
- (c) the address of the registered office of the foreign company in its place of incorporation or origin;
- (d) the name of the foreign company; or
- (e) the powers of any directors resident in the Cook Islands who are members of the local board of directors of the foreign company,

the foreign company shall within 1 month after the change or alteration lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

(2) If a foreign company increases or decreases its authorised share capital it shall, within 28 days after such change, lodge with the Registrar notice of the amount from which and to which and to which it has been so changed.

(3) If a foreign company not having a share capital increases the number of its members beyond the registered number it shall, within 1 month after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

203. **Service on foreign companies** - Subject to any law relating to the service in criminal causes, any document required to be served on a foreign company shall be sufficiently served if addressed to the foreign company and left or sent by post to its registered office in the Cook Islands.

204. **Cessation of business in the Cook Islands** - If a foreign company ceases to have a place of business or to carry on business in the Cook Islands, it shall within 7 days after so ceasing lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document, not being a document that ought to have been lodged before that day, with the Registrar shall cease, and the Registrar shall forthwith remove the name of that foreign company from the register.

205. **Foreign liquidation** - (1) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin -

- (a) the company or, where the company has been dissolved, the person in whom the assets of the company vest by virtue of the law of that place pursuant to the liquidation or dissolution shall, within 1 month after the commencement of the liquidation or dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment;
- (b) the Registrar shall forthwith appoint a liquidator and, until the winding-up of its affairs in the Cook Islands is completed, the foreign company shall be deemed to continue to exist in the Cook Islands; and
- (c) the Court shall be deemed to have ordered that it be wound up.

(2) The liquidator so appointed shall get in all the assets of the foreign company situate in or recoverable in the Cook Islands and shall, in so doing, have all the powers of a liquidator of an international company incorporated in the Cook Islands.

(3) Before paying or transferring to the foreign liquidator any of the assets got in within the Cook Islands, the liquidator shall -

- (a) pay to the Registrar all penalties, costs, fees and charges due and owing; and
- (b) pay to any person resident in the Cook Islands to whom at the time of the appointment of the liquidator in the Cook Islands any debt was due, incurred bona fide by the foreign company in respect of the supply of services to or for the foreign company, the amount of such debt,

and it is hereby enacted that such penalties, costs, fees, charges and debts payable by the liquidator under the provisions of this subsection are a charge upon the assets of the foreign company ranking after the costs of the liquidator appointed by the Registrar but in priority to all other charges and claims whatsoever.

(4) The provisions of this Act relating to the striking-off from the Register of Companies the names of international companies shall apply mutatis mutandis to foreign companies.

206. **Names of foreign companies** - (1) The restrictions upon the registration of the names of international company shall apply mutatis mutandis to the registration of foreign companies.

- (2) If a foreign company is registered, either in error or otherwise, with a name with which it should not have

been registered, the Registrar may, upon 1 month's notice to the foreign company requiring it to change its name, strike the company from the register upon default in its so doing.

(3) No foreign company shall use in the Cook Islands, or elsewhere by reference to acts done or to be done in the Cook Islands, any name other than that under which it is registered, under this Part and every foreign company and every officer of the company who knowingly authorises or permits the default shall be guilty of an offence against this Act.

207. **Returns by foreign companies** - Regulations may be made prescribing the registers and returns to be kept and made by foreign companies and fixing the time within the same must be kept and made and the fees and charges payable therefor.

PART XI

MISCELLANEOUS

208. **Service of documents on companies** - Subject to any written law relating to the service of process in criminal cases, any document may be served on a company by leaving it at or sending it by post to the registered office of the company.

209. **Transfer from the Cook Islands of companies incorporated under this Act** - (1) An international company incorporated under this Act may, if permitted by its articles or a special resolution of its members and if its directors sign a statutory declaration to the effect that:

- (a) the proposed transfer will not adversely affect any creditor; and
- (b) the company has complied with the provisions of this Act (including the payment of all fees); and
- (c) secured creditors (if any) have consented in writing,

apply to the proper officer of a country other than the Cook Islands, or of a jurisdiction within such a country, by the laws of which such transfer is authorised for an instrument transferring the company as if it had been incorporated under the laws of that other country or jurisdiction; and on and after the date of the instrument of transfer the company shall become a company under the laws of that country or jurisdiction and be domiciled therein.

[(2) and (3) Repealed]

(4) Upon an instrument transferring the company to another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the company shall forthwith notify the Registrar of the details and the company shall be deemed to have ceased to be a company incorporated in the Cook Islands from the date when its transfer to that other country or jurisdiction takes effect, and the Registrar shall remove its name from his register: Provided that nothing in this subsection shall -

- (a) prevent such a company from being registered in the Cook Islands to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company incorporated in the Cook Islands; or
- (b) take away or affect the jurisdiction of any Court in the Cook Islands to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company incorporated in the Cook Islands.

(5) Where an international company notifies the Registrar under subsection (4) that an instrument transferring the company to another country or jurisdiction has been executed by the proper officer of the other country or jurisdiction and that notification is false, then, notwithstanding that the Registrar has removed the name of the company from the register in pursuance of the provisions of that subsection -

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company were still registered under this Act; and
- (b) the company shall be liable to be wound up pursuant to the provisions of this Act as if it were still registered under this Act.

[Amended Act 1991/31]

210. **Transfer to domestic company register** - (1) An international company incorporated under this Act, upon obtaining the approval of the Minister and within 2 months from the date on which that approval is obtained, may apply to the Registrar under the Companies Act 1970-71 to be registered as a domestic company under this Act.

(2) An international company shall not apply to the Minister for approval under subsection (1) unless -

- (a) that application is authorised by -
 - (i) the holders of not less than three-quarters of each class of shares in the company; and
 - (ii) the holders of not less than three-quarters of the company's debentures, if any, of each class; and
- (b) not less than 28 days before applying to the Minister for such approval, the company has published in the Cook Islands Gazette a notice of its intention to make the application; and
- (c) it lodges with the Minister an affidavit sworn by a director of the company in which are set out in the names and address of its creditors and the total amount of its indebtedness to creditors.

(3) The Minister shall not give his approval to an international company applying for registration as a domestic company under the Companies Act 1970-71 unless he is satisfied that -

- (a) the requirements of subsection (2) have been complied with;
- (b) the intended transfer is unlikely to be detrimental to the rights or proper interests of any of the company's members, debenture holders or creditors; and
- (c) the company has complied with all the provisions of this Act which it should have complied with,

and the Minister may make his approval conditional upon the company taking such steps as he considers necessary to remedy any failure to comply with any provision of this Act.

(4) The international company shall forthwith notify the Registrar when the company is deemed to have ceased to be a company incorporated under this Act.

211. **Costs before Registrar** - In respect of any proceedings before the Registrar under the provisions of this Act, the

Registrar at his own discretion may direct that the costs of one party be paid in such amount and by such other party as he thinks just.

212. **Security for costs** - Where an international company is a plaintiff in any court action or other legal proceedings, the Court may require sufficient security to be given for costs and stay all proceedings until the security is given.

213. **Disposal of shares of shareholder whose whereabouts are unknown** - (1) Where by the exercise of reasonable diligence an international company is unable to discover the whereabouts of a registered shareholder for a period of not less than 10 years, the company may cause an advertisement to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of 1 month from the date of the advertisement intends to transfer the shares to the Registrar.

(2) If after the expiration of 1 month from the date of an advertisement by an international company the whereabouts of a shareholder remains unknown, the company may transfer the shares held by the shareholder in the company to the Registrar and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Registrar.

(3) The Registrar shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale as unclaimed moneys.

214. **Power to grant relief** - (1) In any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, if it appears to the Court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him under this section as it would have had if it had been a Court before which proceedings against him for the negligence, default, breach of duty or breach of trust has been brought.

(3) The persons to whom this section applies are -

- (a) officers of an international company;
- (b) persons employed by an international company as auditors, whether or not they are officers of the company;
- (c) experts within the meaning of this Act; and
- (d) any persons who are receivers, receivers and managers or liquidators appointed or directed by the Court of the Registrar to carry out any duty under this Act in relation to an international company and all other persons so appointed or so directed.

215. **Irregularities in proceedings** - (1) No proceedings under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court or the Registrar is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court or the Registrar, and the Court or the Registrar may, if it or he thinks fit, make an order declaring that such proceeding is valid notwithstanding any such irregularity or deficiency.

(2) Without affecting the generality of subsection (1) or any other provision of this Act, where any omission, defect, error or irregularity, including the absence of a quorum at any meeting, has occurred in the management or administration of an international company whereby there has been a default in the observance of the memorandum or articles of the company or whereby any proceedings at or in connection with any meeting or purported meeting have been rendered ineffective, including the failure to make or lodge any declaration of solvency pursuant to section 170, the Court or the Registrar -

- (a) may, either of its or his own motion or on an application lodged by any interested person, make such order as it or he thinks fit to rectify or cause to be rectified or to negative or modify or cause to be negated or modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered invalid by or as a result of any omission, defect, error or irregularity;
- (b) shall before making any such order satisfy itself or himself that such an order would not do injustice to the company or to any member or creditor thereof;
- (c) where any such order is made, may give such ancillary or consequential directions as it or he thinks fit; and
- (d) may determine what notice or summons is to be given to other persons or the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(3) For the purpose of subsection (2), "meeting" in relation to an international company includes -

- (i) a meeting of the company;
- (ii) a meeting any class of members of the company;
- (iii) a meeting of the debenture holders or any class of debenture holders of the company;
- (iv) a meeting of the directors of the company or of any committee of the directors; and
- (v) a meeting of the directors or any class of the creditors of the company.

(4) The Court or the Registrar, whether the company is in process of being wound up or not, may extend or shorten any time for doing any act or taking any proceedings allowed or omitted by this Act or any regulations hereunder upon such terms, if any, as the justice of the case may require and any such extension may be ordered although the application for the same is not made until after the time originally allowed or limited.

216. **Translation of instruments** - (1) Where under this Act an international company is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the company shall lodge at the same time with the Registrar a certified translation thereof.

(2) Where under this Act an international company is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the company shall keep at its registered office in the Cook Islands a certified translation thereof.

(3) For the purpose of this section, a "certified translation" means a translation into the English language

certified in the English language as a correct translation by the translator before -

- (a) a diplomatic or consular officer of any country;
- (b) a notary public, justice of the peace or similar person of any country;
- (c) any solicitor in the Cook Islands or similar person of any country specified by section 229A of this Act; or
- (d) or any other person before whom by any law of the Cook Islands affidavits may lawfully be sworn for use in proceedings in any Court in the Cook Islands.

[Amended Act 1991/31]

217 *[Repealed by 1991 No. 31]*

218 *[Repealed by 1991 No. 31]*

219. **General penalty provisions** - (1) Any person who -

- (a) does anything which by or under this Act he is forbidden to do;
- (b) does not do something which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act and, save as hereinafter provided in this section, shall be liable on conviction to a fine of \$500.

(2) Any person who is guilty of an offence against the provisions, or any part of the provisions, of any one of sections 8, 54, 76, 113, 127, 128, 141, 193 and 241 shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months in respect of each such offence.

(3) Any person who is guilty of an offence against the provisions, or any part of the provisions, of any of sections 14A(4), 87, 195, 227, 232 and 239 shall be liable on conviction to a fine of \$5,000 and to imprisonment for 12 months in respect of each such offence.

(4) Where -

- (a) any person is convicted of an offence involving dishonesty; and
- (b) the Court is satisfied that the international company has suffered loss or damage as a result of the act or omission that constitutes the offence,

the Court may in addition to imposing a penalty if it sees fit, order the convicted person to pay compensation to the international company of such amount as the Court specifies.

[Amended Act 1991/31; 2005/8]

220. **Procedure where none laid down** - In the event that any or step is required or permitted to be done under this

Act and no form is prescribed or procedure laid down in this Act or the regulations for doing the same, application may be made to the Registrar for directions as to the manner in which the same may be done and any act or step done or taken in accordance with his directions shall be a valid performance of such act or step.

221. **Regulations** - (1) Regulations may be made by the Queen's Representative prescribing all matters and things required or authorised by this Act to be prescribed or provided or which are necessary or convenient to be prescribed or provided for carrying out or giving effect to this Act and in particular for prescribing penalties for breaches of the regulations.

(2) Regulations may be made by the Queen's Representative fixing and prescribing the fees to be paid under this Act and may be made delegating the power of fixing such fees to prescribed persons or bodies.

222. **Rules of court** - The Chief Justice may make rules of court concerning the mode of proceedings to be had for winding-up an international company or foreign company in the Court and for giving effect to the other provisions of this Act by which jurisdiction is conferred on the High Court.

223. **Appeals** - (1) An appeal shall lie to the Court in respect of any decision, order or approval made, given or refused by the Registrar in exercise of his powers under any one or more of the sections, sub-sections, paragraphs and sub-paragraphs of this Act specified hereunder:

- (a) section 54(1);
- (b) section 54(2)(b);
- (c) section 54(2)(c)(ii);
- (d) section 54(3);
- (e) section 55;
- (f) section 78;
- (g) section 83;
- (h) section 127;
- (i) section 129;
- (j) section 137;
- (k) section 177;
- (l) section 197;
- (m) section 215;
- (n) section 233;
- (o) section 234;

(p) section 244.

(2) Pending the determination of an appeal brought under subsection (1), no step shall be taken consequently upon such decision, order, approval or refusal unless the Court or a judge or the registrar of the Court otherwise orders.

224 *[Repealed by 2004 No. 14]*

225. Prohibitions by Minister - (1) Where the Minister suspects that:

- (a) any international company or foreign company has been, or may be, involved in, or is associated with or related to any person who has been, or may be, involved in the laundering of the proceeds of the sale of prohibited narcotic substances or illegal drugs whether in the Cook Islands or elsewhere; or
- (b) an international or foreign company has been, or may be, involved in, or is associated with or related to any person who has been, or may be involved in criminally fraudulent activities whether in the Cook Islands or elsewhere;

then the Minister may make an order -

- (i) prohibiting the initial incorporation of any international company or class of companies;
- (ii) prohibiting the initial registration of a foreign company; or
- (iii) directing any international company or foreign company to cease to carry on its business or part of its business either immediately or within such time as may be specified in the order.

(2) An order made under this section may be revoked or varied by the Minister.

(3) In making an order under this section the Minister shall not be required to act judicially and such order shall be final.

[Amended Act 1991/31]

226. No action to lie against certain persons - No action shall lie against the Government or any statutory body or authority of the Cook Islands, the Queen's Representative, the Prime Minister, any Minister, any judge or any public officer in respect of anything done or omitted in exercise or purported exercise by the Queen's Representative, the Prime Minister, any Minister, any judge or any public officer of its or his functions or duties under this Act.

226A. Enforcement of indemnity - Where an international company provides in its memorandum or articles that any director secretary or other officer or servant shall have a right of indemnity in respect of costs charges losses damages or expenses incurred that indemnity (if otherwise enforceable) may be sued upon by any person to whom that indemnity is expressed as extending notwithstanding that such person may not be a signatory to the memorandum or articles (as the case may be) and shall be as binding and enforceable as if contained in a deed executed by the company for the benefit of that person.

[Amended Act 1989/22]

227. Privacy - (1) Except where the provisions of this Act require, and subject to this section, it shall be an offence for a person to disclose to any other person information relating to the establishment, constitution, business undertaking or affairs of an international company or a foreign company.

- (2) Subsection (1) shall not apply to a disclosure if –
- (a) the disclosure is required or authorized by the Court; or
 - (b) the disclosure is made for the purpose of discharging any duty, performing any function or exercising any power under any Act; or
 - (c) the disclosure is made as required by or under a search warrant.

(3) All judicial proceedings other than criminal proceedings relating to an international company or a foreign company shall, unless ordered otherwise by the Court, be heard in camera. The decision of the Court in any proceeding may unless ordered otherwise by the Court as to the whole or any part of the decision, be published: Provided that a copy of every decision shall be forwarded by the Registrar of the Court to the Financial Supervisory Commission.

(4) A trustee company or an officer or employee of a trustee company, or an officer or employee of an international company or a foreign company may divulge or make available information relating to the establishment, constitution business undertakings or affairs of an international company or a foreign company to any person or class of persons as that trustee company, officer or employee considers necessary from time to time for carrying out the management and administration of the international company or foreign company in the ordinary course of business; or to a legal practitioner for the purpose of obtaining legal advice relating to establishment, constitution, business undertakings or affairs of an international company or a foreign company; or for the purpose of prosecuting or defending any litigation relating to the establishment, constitution, business undertakings or affairs of an international company or foreign company .

[Amended 1991/31; 2004/14]

228. **Guarantee by Crown** - The Crown guarantees to all international companies and foreign companies that there shall be no compulsory acquisition or expropriation of the property of such companies, or their investors, situated in the Cook Islands except -

- (a) in accordance with the due process of law;
- (b) for a public purpose defined by law; and
- (c) in payment of compensation as law.

228A . **Form of company registers and records** - Subject to section 103 of this Act, any register, records, accounts or documents required to be kept by an international company pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that the international company can readily produce legible printed evidence of its contents.

[Added Act 1991/31]

228B. **Asset protection** - (1) This section shall only apply to an international company where the articles of that international company state that the section shall so apply.

- (2) In this section -

"Expropriation" means any act of confiscation, compulsory acquisition, nationalisation or any similar act;

"Membership interest" means -

- (a) any share or interest in any share in an international company (other than a bearer share); or
- (b) any other interest of a person where that interest arises from or in connection with the fact that the person is a member of an international company.

"Specified person" means the person or persons nominated in the articles of an international company for the purpose of this section; and

"Specified event" means any event stated in the articles of an international company to be a specified event in respect of one or more of the members of that international company.

(3) The articles of an international company may provide that on the happening of any specified event (including without limitation where any foreign government expropriates any membership interest of a member of an international company) then the provisions of this section shall apply.

(4) Upon the occurrence of any specified event:

- (a) the membership interest of any member of an international company affected by that event shall automatically vest in the specified person and if more than one specified person, to those specified persons in the proportions in the manner stated in the articles of the international company; and
- (b) no other person (including the original owner) shall have any rights in or to the membership interest.

(5) Every holder of a membership interest in an international company shall be entitled to nominate one or more specified persons and if more than one specified person is nominated by a holder of a membership interest, the proportions and manner in which the membership interest shall vest in each of those specified persons shall be stated.

(6) A holder of a membership interest in an international company shall be entitled at any time, and from time to time, to nominate or remove a specified person by notice in writing to the international company.

[Added Act 1991/31]

228C. **Application of various sections to companies limited by guarantee and companies limited by both guarantee and shares** - (1) Reference in the following sections of this Act to the words "share", "shares" and "shareholder" shall, in respect of a company limited by guarantee or a company limited by shares and limited by guarantee, be taken to be a reference to the words "membership interest", "membership interests" and "member", respectively:

Section 6	Section 71
Section 14	Section 94
Section 16	Section 99
Section 31	Section 105
Section 33	Section 107
Section 49	Section 111
Section 53	Section 117
Section 55	Section 127
Section 61	Section 130A
Section 62	Section 159
Section 63	Section 172
Section 65	Section 209

Section 68
Section 69
Section 70

Section 210
All the sections of Part XII

[Added Act 1991/31]

PART XII

SHARES AND DEBENTURES

Division 1 - Interpretation and Application

[Amended Act 1990/4]

229. **Interpretation** - In this Part, except in so far as the context or subject matter otherwise indicates or requires -

"Borrowing company" means an international company that is or will be under a liability, whether or not such liability is present or future, to pay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the company;

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

229A. **Non-application of Division 2 were prospectus registered in approved jurisdiction** - Division 2 of this Part of this Act shall have no application to any invitation, prospectus or advertisement where a prospectus in connection with the issue of shares or debentures in or the depositing or lending of money with or to an international company as the case may be has been registered, lodged, filed, deposited or otherwise issued in accordance with the laws of a jurisdiction in which is located an Approved Stock Exchange as defined in section 126A of this Act.

Provided that within 28 days or such extended time as the Registrar in his discretion may allow, of registering, lodging, filing, depositing or otherwise issuing in the relevant jurisdiction, a copy of such prospectus has been delivered to the registered office of the international company and a duplicate copy signed by two directors of the international company has been delivered to the Registrar who shall forthwith file such duplicate prospectus on the international company's file at his office.

[Added Act 1990/4; Amended 2004/14]

229B. **Non application of Divisions 2 and 3 to Registered Listed Companies** - Nothing in Division 2 or Division 3 of this Part of this Act shall apply to any Registered Listed Companies.

Division 2 - Prospectuses

230. **Officers to public** - Any international company which, or any officer, director, agent or any other person on behalf of the company who -

- (a) issues an invitation or distributes forms of application to the public or to any member of the public to subscribe for shares or debentures in the company; or

- (b) issues an invitation to the public or to any member of the public or to any member of the public to deposit money with or lend money to the company,

shall be guilty of an offence against this Act, unless -

- (c) the Minister has given his prior written consent to the issuing of that invitation or the distribution of those forms of application to the public; and
- (d) that invitation or form of application to the public is made in accordance with this Part.

231. **Requirement to issue a prospectus with any form or application for shares or debentures** - Subject to section 233 - (1) Any subject to subsection (2), a person shall not issue, circulate or distribute any form of application for shares in or debentures of an international company unless the form is issued, circulated or distributed together with a prospectus a copy of which has been lodged with and filed by the Registrar.

(2) Subsection (1) shall apply unless the form of application is issued, circulated or distributed in connection with shares or debentures which are not offered to the public.

(3) An international company shall not, without the approval of a general meeting, vary the terms of a contract referred to in the prospectus, unless the variation is made subject to the approval of a general meeting.

232. **Invitations to public to lend money to or deposit money with a company** - (1) An invitation to the public to deposit money with or lend money to an international company shall not be issued, circulated or distributed by the Company or by any other person unless -

- (a) a prospectus in relation to the invitation has been lodged with and filed by the Registrar;
- (b) the prospectus contains an undertaking by the Company that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in respect to the invitation, issue to that person a document which acknowledges, evidence or constitutes an acknowledgment of the indebtedness of the company in respect of that deposit or loan; and
- (c) the document is described or referred to in the prospectus and in any other document, whether constituting or relating to the invitation as -
 - (i) an unsecured note or an unsecured deposit note;
 - (ii) a debenture or certificate of debenture stock in accordance with this section; or
 - (iii) a debenture or certificate of debenture stock in accordance with this section

(2) No invitation to the public to deposit money with or lend money to an international company shall be made except through a trustee company.

(3) Where pursuant to an invitation referred to in subsection (1) an international company has accepted from any person any money as a deposit or loan, the company shall, within 2 months after the acceptance of the money, issue to that person a document which -

- (a) acknowledges, evidences or constitutes an acknowledgment of the indebtedness of the company in respect of that deposit or loan; and

- (b) complies with the description contained in the prospectus and with any regulations made hereunder and contains on its face a statement that it is a document of that description.

(4) Subject to regulations, the Minister may by notice in the Cook Islands Gazette declare an international company to be a prescribed company for the purposes of this section.

(5) Nothing in this section shall apply to a prescribed company or to a trustee company and nothing in this Act shall require a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed company or with a trustee company.

(6) Any person who contravenes or fails to comply with any of the provisions of this section and any officer of an international company who is in default, shall be guilty of an offence against this Act.

(7) For the purposes of this section, a document issued by a borrowing company certifying that a person named therein in respect of any deposit with or loan to the company is the registered holder of a specified number or value -

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

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

233. **Requirements of a prospectus** - (1) Until regulations relating to the issue of prospectus have been made, no prospectus shall be issued unless it has been approved as to its form and content by the Registrar.

(2) Upon regulations relating to the issue of prospectuses being made, a prospectus shall be issued only in accordance with the provisions of such regulations.

234. **Advertisements** - (1) No advertisement offering or calling attention to an offer or intended offer of shares in or debentures of an international company or proposed international company to the public for subscription or purchase shall be published in the Cook Islands or elsewhere until it has been approved by the Registrar.

(2) Applications for approval of an advertisement shall be lodged with the Registrar together with a copy of the advertisement verified in such manner as the Registrar directs.

(3) Any person or company who publishes or causes to be published in the Cook Islands or elsewhere an advertisement without the prior approval of the Registrar in breach of the provisions of subsection (1) shall be guilty of an offence against this Act.

235. **Retention of over-subscriptions in debenture issue** - (1) An international company shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the company has specified in the prospectus -

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

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

(2) Subject to the provisions contained in the regulations, where an international company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions -

- (a) the company shall not make, authorise or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement of reference to the total assets and the total liabilities of the company; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

236. **Registration of prospectus** - (1) A prospectus shall not be issued, circulated or distributed by any person unless a copy thereof has been lodged with a file by the Registrar.

(2) The Registrar shall not file a copy of any prospectus issued by an international company unless -

- (a) a copy signed by every director and by every person who is named therein as a proposed director of the company or by his agent authorised in writing is lodged with the Registrar on or before the date of its issued and the prescribed fee paid;
- (b) the prospectus appears to comply with the requirements of this Act and the regulations or the Registrar is satisfied that any departure from the requirements of this Act or the regulations by such prospectus is justified and is unlikely to mislead a person investing on the faith of its contents; and
- (c) there are also lodged with the Registrar copies, verified as the Registrar directs, of any consents required by section 238 to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of such contract not reduce into writing, a memorandum giving full particulars thereof verified as the Registrar directs.

(3) If a prospectus is issued by an international company without a copy thereof having been so filed, the company and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence against this Act.

[Amended Act 1990/4]

237. **Document containing offer of shares to be deemed to be a prospectus** - (1) Where an international company allots or agrees to allot to any person any shares or debentures of the company with a view to all or any of them being offered for sale to the public, the offer to the public shall be made through a trustee company and any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and all enactments and rules of law as to minimum subscriptions, to advertisements, to the contents of prospectus and to liability in respect of advertisements and statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an

agreement to allot, shares or debentures was made by an international company with a view to the shares or debentures being offered for sale to the public if it is shown -

- (a) that an offer of the shares or debentures or any of them for sale to the public was made within 6 months after the allotment of agreement to allot; or
- (b) that at the date when the offer of the shares or debentures or of any of them for sale to the public was made, the whole consideration to be received by the company in respect of the shares or the debentures had not been so received.

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

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

- (a) the net amount of the consideration received by the international company making offer in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted may be inspected.

(5) Where an offer to which this section relates is made by an international company, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the company by 2 directors of the company and any such directors may sign by his agent authorised in writing.

238. Expert's consent to issue of prospectus containing statement by him - (1) A prospectus inviting the subscription for a purchase of shares in or debentures of an international company and including a statement purporting to be made by an expert to be based on a statement made by an experts shall not be issued unless -

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

(2) If any prospectus is issued by an international company in contravention of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence against this Act.

239. Civil liability for mis-statement in prospectus - (1) Subject to this section, each of the following persons shall be liable to pay compensation to all person who subscribe for or purchase any shares or debentures in an international company on the faith of a prospectus for any loss or damage sustained by reason by any untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be material, that is to say every person who -

- (a) is a director of the company at the time of the issue of the prospectus;
- (b) authorised or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

- (c) is a promoter of the company; or
- (d) authorised or caused the issue of the prospectus.

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

(3) No person shall be so liable in respect of the issue of a prospectus by an international company if he proves

- (a) that, having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent;
- (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;
- (c) that after the issue of the prospectus and before allotment or sale thereunder and, on becoming aware of any untrue statement therein, he withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that -
 - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debenture believe, that the statement was true;
 - (ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 238 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before any allotment or sale thereunder; and
 - (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representative of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 238, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who apart from this subsection would under subsection (1) be liable by reason of his having

given a consent required of him by section 238, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves -

- (a) that, having given his consent under section 238 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, and on becoming aware of the untrue statement, he withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.

(6) Where -

- (a) a prospectus contains the name of a person as a director of an international company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of a person is required under section 238 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, and any other person who authorised or caused the issue thereof shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceeding brought against him in respect thereof.

(7) Where in any prospectus or advertisement of the kind referred to in section 234(1) there is an untrue statement or wilful non-disclosure, any person who authorised or caused the issue of the prospectus or advertisement shall be guilty of an offence against this Act unless he proves that the statement or non-disclosure was immaterial or that he had reasonable grounds for believing and did, up to the time of the issue of the prospectus, believe that the statement was true or that the non-disclosure was immaterial.

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

Division 3 - Restrictions on allotment

240. **Minimum subscriptions** - (1) No allotment shall be made of any shares of an international company offered to the public unless the shares have been offered to the public through a trustee company.

(2) A trustee company shall be the agent of an international company which has offered shares to the public through the trustee company to receive applications for allotments of the shares and shall be so described in the prospectus.

(3) All moneys payable on application for the shares in an international company shall be paid to the trustee company acting as agent for the company and pending receipt by the trustee company of the amount of the minimum subscription it shall hold all moneys received by it as a stakeholder and if the amount of the minimum subscription is not

received by the trustee company within the time stated in the prospectus, the trustee company shall, subject to any right under the terms of the prospectus to deduct any costs and charges owing to it or to the Registrar in connection with the prospectus or the offer or his acting as such broker in the matter, return the application money or such proportion thereof as remains after making deductions, if any, in accordance with the terms of the prospectus to the applicants pro rata in accordance with the respective amounts paid by them.

(4) Upon receipt by a trustee company acting as agent for an international company of the amount of the minimum subscription on behalf of the company the trustee company shall, subject to its right to deduct from such moneys its proper remuneration and disbursements, hold such moneys and any further application moneys as agent for the company.

(5) No allotment shall be made of any shares of an international company offered to the public unless -

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

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

(6) The minimum subscription shall be -

- (a) calculated -
 - (i) on the nominal value of each share where they have such a value; or
 - (ii) on the price at the time of issue where they have no par value; and
- (b) reckoned excluding any amount payable otherwise than in cash.

(7) The amount payable on application on each share offered to the public shall not be less than 5 per centum of the nominal amount of the share or of the issue price, as the case may be.

(8) Any condition requiring or binding any applicant for shares to waive company with any requirements of this section shall be void.

(9) No international company shall allot, and no officer or promoter of an international company or a proposed international company shall authorise or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of 12 months from the issue of the prospectus.

(10) None of the provisions of subsections (1) to (9) (both inclusive) of this section shall have any application in any case where Division 2 of this Part has no application by virtue of section 229A.

[Amended Act 1990/4]

241. **Application moneys to be held in trust until allotment** - (1) Subject to section 240(3), (4) and (5), all application and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public by an international company shall, until the allotment of such shares or debentures, be held by the company upon trust for the applicant in a separate trust account at a bank or in the case of a prospectus registered in any jurisdiction in which is located an Approved Stock Exchange as defined in section 126A of this Act shall be held in accordance with

the laws of that jurisdiction.

(2) If default is made in complying with this section, by an international company, every officer of the company in default who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

(3) For the purposes of this section, "bank" means a company licensed under the Off-Shore Banking Act 1981 or any company or institution carrying on banking business outside the Cook Islands and approved for the purposes of this section by the Registrar.

[Amended Act 1990/4; Act 1991/31]

242. **Trustee for debenture holders** - (1) Every international company which offers debentures to the public for subscription or purchase under this Act shall make provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee company as trustee for the holders of the debentures.

(2) A borrowing company shall not allot any debentures until such time as a trustee company has been appointed trustee for the holders of those debentures.

(3) If default is made by a borrowing company in complying with any provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(4) No person or company, other than a trustee company, shall act as trustee for the holders of debentures.

243. **Contents of trust deed** - (1) Where an international company offers debentures to the public for subscription the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing company may borrow, pursuant to those debentures. That deed shall contain covenants by the borrowing company, or shall be deemed to contain covenants by the borrowing company, to the following effect:

- (a) that the borrowing company will use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) that, to the same extent as if the trustee company acting as trustee for the holders of the debentures were a director of the company, the borrowing company will -
 - (i) make available for the trustee company's inspection the whole of the accounting or other records of the borrowing company; and
 - (ii) give to the trustee company such information as is normally required with respect to all matters relating to the accounting or other records of the borrowing company;
- (c) that the borrowing company will, on an application delivered to its registered office in the Cook Islands by persons holding not less than one-tenth in nominal value or in number of the issued debentures, give notice -
 - (i) to each of the holders of those debentures, other than debentures payable to bearer, as his address as specified in the register of debentures; and
 - (ii) by an advertisement in such newspaper as the Registrar shall direct addressed to all holders

of those debentures,

of a meeting of the holders of those debentures to consider the accounts and balance sheet for the last preceding annual account period of the borrowing company and to give to the trustee company acting as trustee for the holders of the debentures directions in relation to the exercise of its powers, such meeting to be held as prescribed by regulations, if any, and otherwise at a time and place specified in the notice and advertisement, under the chairmanship of a person nominated by the trustee company or such other person as is appointed in that behalf by the holders of those debentures present at the meeting; and

- (d) that all interest, principal and premium, if any, payable to the debenture holders under the terms of the said debentures or the relevant trust deed shall be paid to the debenture holders in the Cook Islands free of all income tax, stamp duty or other tax, or impost or deductions of any kind whatsoever, notwithstanding any Act or law of any other state to the contrary.

Provided that in any case where Division 2 of this Part has no application by virtue of section 229A paragraph (d) of this subsection shall not apply compulsorily but may apply at the election of the borrowing company.

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

(3) Subsection (2) shall not invalidate -

- (a) any release otherwise validly given in respect of anything done or omitted to be done by the trustee company before the giving of the release; or
- (b) any provision enabling such a release to be given -
 - (i) on the agreement thereto of a majority of not less than three-fourths in nominal value or in number of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) with respect to specific acts or omissions of the trustee company.

[Amended Act 1990/4]

244. **Duties of trustee company** - (1) A trustee company, when acting as trustee for the holders of debentures -

- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing company and each of its guarantor companies, which are or may be available by way of security or otherwise, are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;
- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;
- (c) shall exercise reasonable diligence to ascertain whether or not the borrowing company and each of its

guarantor companies have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;

- (d) except where it is satisfied that a breach of the covenants, terms and provisions of the debentures or the trust deed would not materially prejudice the security, if any, for the debentures or the interest of those holders, shall take steps and do all such things as it is empowered to do to cause the borrowing company and any of its guarantor companies to remedy the breach of those covenants, terms and provisions;
- (e) where the borrowing company or any of its guarantor companies fails when so required by the trustee company to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as that trustee company considers necessary or appropriate and obtain the directions of the holders in relation thereto; and
- (f) where the borrowing company submits to those holders a compromise or arrangement, shall give them a statement explaining the effect of the compromise or arrangements and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due enquiry, a trustee company acting as trustee for the holders of debentures at any time is of the opinion that the assets of a borrowing company and of any of its guarantor companies which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient to discharge the principal debt as and when it becomes due, the trustee company may lodge an application in the prescribed form with the Registrar for an order under this subsection and the Registrar may on such application, after giving the borrowing company an opportunity for making representations in relation to that application, by order in writing served on the company at its registered office in the Cook Islands impose such restrictions on the activities of the company, including restrictions on advertising for deposits or loans and on borrowing by the company, as the Registrar thinks necessary for the protection of the interests of the holders of the debentures or the Registrar may, and if the borrowing company so requires, shall, direct the trustee company to lodge an application with the Registrar for an order under subsection (4) and the trustee company shall apply accordingly.

(3) Where -

- (a) after due enquiry a trustee company acting as trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing company and of any of its guarantor companies which are or should be available are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the company has contravened or failed to comply with an order made by the Registrar under subsection (2),

the trustee company may and, where the borrowing company has requested the trustee company to do so the trustee company shall, lodge an application with the Registrar for an order under subsection (4).

(4) Where an application is lodged by a trustee company with the Registrar under subsection (2) or (3), the Registrar, after giving the borrowing company an opportunity of being heard, may order all or any of the following things, namely:

- (a) direct the trustee company to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposal for the protection of

their interests as the trustee company considers necessary or appropriate and for the purpose of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the Registrar thinks fit;

- (b) direct the trustee company to apply to the Court for an order that all or any actions or proceedings before the Court by or against the borrowing company be stayed;
- (c) restrain the payment of any moneys by the borrowing company to the holders of debentures of the company or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures or any part thereof; or
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of debentures, the members of the borrowing company or any of its guarantor companies or the public,

but in making any such order the Registrar shall have regard to the rights of all creditors of the borrowing company.

(5) The Registrar may vary or rescind any order made under subsection (4) as he thinks fit.

(6) A trustee company, in lodging any application with the Registrar, shall have regard to the nature and kind of the security given when the debentures were offered to the public and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing company.

(7) A trustee company may rely upon any certificate or report given or statement made by a solicitor, auditor or officer of the borrowing company or guarantor company if it has reasonable grounds for believing that the solicitor, auditor or officer was competent to give or make the certificate, report or statement.

(8) For the purpose of the last preceding subsection, "solicitor" includes a person who is qualified by the laws of the country where he gives the certificate or makes the report or statement to practise as a solicitor or as a legal practitioner, by whatsoever title he may be called, in that country; and "auditor" shall include a person properly appointed under the laws of the country where he gives the certificate or makes the report or statement to be, or to act as, the auditor of the company in that country.

(9) In any case where Division 2 of this Part has no application by virtue of section 229A:

- (a) the references to "the Registrar" in subsections (2), (3), (4), (5) and (6) of this section shall be deemed to be references to "the Court";
- (b) the Court may order that all or any actions or proceedings before the Court by or against the borrowing company be stayed in lieu of the direction prescribed in paragraph (b) of subsection (4) of this section.

[Amended Act 1990/4]

245. **Proper Law** - Where an international company has offered debentures to the public for subscription or purchase under this Act and issues such debentures in the Cook Islands, then subject to any provisions therein to the contrary such debentures and the relevant trust deed relating to such debentures shall be governed by the law of the Cook Islands.

Provided that this sections shall have no application in any case where Division 2 of this Part has no application by virtue to section 229A.

[Amended Act 1986-87/26; Act 1990/4; Act 1991/31]

246. **Obligations of borrowing company** - (1) Where a trustee company acts as trustee for the holders of any debentures of a borrowing company, the directors of the borrowing company shall -

- (a) at the end of a period not exceeding 3 months ending on a day which the trustee company is hereby required to notify to the borrowing company in writing; and
- (b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee company may, in any special circumstances, allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within 1 month after the end of each such period cause to be lodged with the Registrar a copy of the report relating to this period.

(2) The report referred to in subsection (1) shall be signed by not less than 2 of the directors on behalf of them and shall set out in detail any matters adversely affecting the security, or the interests of the holders of the debentures and, without affecting the generally of the foregoing, shall state -

- (a) whether or not the limitations of the amount that the company may borrow have been exceeded;
- (b) whether or not the borrowing company and each of its guarantor companies have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deeds;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing company, its subsidiaries or its guarantor companies or any of them have occurred which materially affect any security or charge created by the debentures or any trust deed and if so, particulars of those circumstances;
- (e) whether or not there has been any material change in the nature of the business of the borrowing company or any of its subsidiaries or any of its guarantor companies since the debentures were first issued to the public which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing company has deposited money with or lent money to or assumed any liability of a company which pursuant to section 5(5) is deemed to be related to the borrowing company, particulars of -
 - (i) the total amount so deposited or lent and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total amount owing to the borrowing company in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liability which are secured and those which are

unsecured, but not including any deposit or loan to or any liability assumed on behalf of a company if that company has guaranteed the repayment of the debentures of the borrowing company and has secured the guarantee by a charge over its assets in favour of the trustee company acting as trustee for the holders of the debentures of the borrowing company.

(3) Where a trustee company acts as trustee for the holders of any debentures issued by a borrowing company, the borrowing company and each guarantor company which has guaranteed the repayment of the moneys raised by the issue of those debentures within 42 days after the creation of the charge, shall furnish the trustee company on behalf of the holders of the debentures, whether or not any demand therefor by it has been made, with particulars in writing of any charge created by the company or the guarantor companies, as the case requires, and when the amount to be advanced upon the security of the charge is indeterminate, within 14 days after the advance, with particulars of the amount or amounts in fact advanced, but where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every 3 months.

(4) The directors of every borrowing company which has issued debentures to the public and of every guarantor company which has guaranteed the repayment of the moneys raised by the issue of the debentures to the public shall at some date not later than 10 months, or in the case of any particular company not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee company acting on behalf of the debenture holders for that company, and after the expiration of each financial year of the company, cause to be made out and lodged for that company, and after the expiration of each financial year of the company, cause to be made out and lodged with the Registrar and with the trustee company a profit and loss account together with a detailed statement of outstanding liability under such debentures for the period from the end of that financial year and a balance sheet as at the end of the period to which the profit and loss account relates.

(5) The provisions of section 113 and 115 and of any regulations made thereunder shall be applicable mutatis mutandis to every profit and loss account and balance sheet made out and lodged pursuant to subsection (4) as if that profit and loss account and balance sheet were a profit and loss account and balance sheet referred to in those sections or regulations; but notwithstanding the foregoing provisions of this subsection, where any guarantor company, being a company which is incorporated in any state or territory nominated for the purposes of this section by the Minister, has lodged with the appropriate authority in any such nominated state or territory a profit and loss account and balance sheet for the relevant period, that shall be sufficient compliance with the requirements of subsection (4) if there is, with the consent of the trustee company acting as trustee for the holders of the debentures of the borrowing company, lodged with the Registrar and the trustee company certified copied of the profit and loss account and balance sheet so lodged.

(6) Where the directors of a borrowing company do not lodge with the trustee company acting as trustee for the holders of the debentures of the company a report as required by subsection (1) or where the directors of a borrowing company or the directors of a guarantor company do not lodge with the trustee company the balance sheet or profit and loss account and report as required by subsection (4) within the time prescribed, the trustee company shall as soon as conveniently possible lodge notice of that fact with the Registrar.

247. **Obligation of guarantor company to furnish information** - (1) For the purpose of the preparation of a report that by this Act is required to be signed by or on behalf of the directors of a borrowing company or any of them, that company may, by notice in writing, require any of its guarantor companies to furnish it with any information relating to that guarantor company which by this Act is required to be contained in that report, and that guarantor company shall furnish the borrowing company with that information before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(2) A company which fails to comply with the requirement contained in a notice given pursuant to subsection (1) and every officer of that company who is in default shall be guilty of an offence against this Act.

248. **Loans and deposits to be immediately repayable on certain events** - (1) Where in any prospectus issued in connection with an invitation to the public to subscribe for or to purchase debentures of a company there is a statement as to any particular purpose or project for which the moneys received by the company in response to the invitation are to be applied, the company shall from time to time make reports to the trustee company acting as trustee for the holders of debentures of the company as to the progress that has been made towards achieving such purpose or completing such project.

(2) Each such report shall be included in the report required to be furnished to the trustee company under section 246(1).

(3) Where it appears to a trustee company to which a report is furnished by an international company that such purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, then within a reasonable time, the trustee company may, and if in its opinion it thinks it is necessary for the protection of the interests of the holders of the debentures the trustee company shall, given notice in writing to the company requiring it to repay the moneys so received by the company and, within 1 month after such notice is given, lodge with the Registrar a copy of such notice.

(4) A trustee company shall not give notice pursuant to the provisions of subsection (3) if it is satisfied -

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of the debentures have not been materially prejudiced by the failure to achieve or complete or project within the time stated in the prospectus or within a reasonable time; or
- (c) that the failure to achieve the purpose or project was due to circumstances, other than shortage of funds, beyond the control of the company that could not reasonably have been foreseen by that company at the time that the prospectus was issued.

PART XIII

APPLICATION OF OTHER ACTS

249. **Application of other Acts to international companies** - (1) For the purposes of this section -

"foreign currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed otherwise than in New Zealand money, and also includes rights and instruments of title to New Zealand money;

"securities" includes shares, stock, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts of the deposit of securities and documents of title to securities but does not include bills of exchange or promissory notes.

(2) Subject to subsection (3), (4) and (5), no Act of the Cook Islands, or any regulation, by-law or rule shall thereunder, shall -

- (a) impose -
 - (i) any liability, duty, responsibility, obligation or restrictions;

- (ii) any fee, impost, tax, levy, dues, duty or excise; or
- (iii) any fine or penalty,

on an international company or a foreign company; or

(b) require -

- (i) the deposit of any moneys in any public account by;
- (ii) the filing of any accounts, returns, reports or records by; or
- (iii) the licensing or registration of,

an international company or a foreign company,

other than this Act, the Crimes Act 1969, the Criminal Procedure Act 1980-81, the Proceeds of Crime Act 2003, the Financial Supervisory Commission Act 2003, the Banking Act 2003, the Mutual Assistance in Criminal Matters Act 2003, the Extradition Act 2003, the Financial Transactions Reporting Act 2004, the Trustee Companies Act 1981-82 the Terrorism Suppression Act 2004 and the Shipping Act 1998.

(3) Every international company and every foreign company may sue and be sued in the Court and accordingly shall be subject to the Judicature Act 1980-81 and to every regulation, by-law or rule made under that Act and to all other rules of procedure of the Court whether provided for under or by virtue of statute or made by the Court in its inherent jurisdiction.

(4) Except where onshore business is transacted by way of an isolated transaction that is completed within a period of 31 days (not being one of a number of similar transactions repeated more than once), subsection (2) shall not apply to a foreign company which transacts onshore business (as defined in section 249A) in its transaction of that onshore business whether it be by way of isolated transaction or of a continuing nature.

(5) Subsection (2) shall not apply in respect of income derived by a foreign company where that income is derived by way of dividend, interest, royalty or any other means of distribution, paid by a domestic company (other than a trustee company), or paid by a natural person ordinarily resident in the Cook Islands, acting in his personal capacity.

[Amended Act 1986-87/26; Act 1987/26; Act 1988/6; Act 1989/22; Act 2004/14; Act 2006/3]

249A. **Regulation of foreign investment in the Cook Islands** - (1) In this section -

"Administrative onshore business" means -

- (a) any transaction or dealing by an international company or a foreign company with a local entity engaged in the practice of law in the Cook Islands for the purpose of obtaining legal advice or representative;
- (b) any transaction or dealing by an international company or a foreign company with a local entity engaged in the practice of accounting in the Cook Islands for the purpose of having prepared or audited any of the accounts of that company;

- (c) any transaction or dealing by an international company or a foreign company with a local entity -
 - (i) registered under the Banking Act 1969 for the purposes of facilitating the deposit with or movement by that local entity of any of the monies of that company; or
 - (ii) registered under the Off-Shore Banking Act 1981 where the transaction or dealing is with that division of the local entity which exercises the right to transact off-shore banking business conferred on it pursuant to that Act;
- (d) any other class of transaction or dealing, being -
 - (i) a class of transaction or dealing by any international company or foreign company with a local entity in respect of the provision of ancillary services by the local entity to any such company to enable it to carry on its business in and from the Cook Islands; and
 - (ii) of such a kind or nature that such services cannot reasonably be supplied by or through a trustee company,

as may from time to time be prescribed.

"Interest" shall include any interest, whether legal or equitable and whether vested or contingent in nature.

"Local entity" means -

- (a) in the case of a body corporate -
 - (i) a domestic company (except where such a company is a trustee company);
 - (ii) the branch or office in the Cook Islands of an overseas company registered as such under the companies Act 1970-71 (which branch or office shall for the purposes of this Act be deemed to have legal existence and personally separate and distinct from the legal existence and personality of that company as a whole and its business and operations deemed similarly separate and distinct;
 - (iii) any foreign company which in contravention of section 200(4) of this Act either has a place of business in the Cook Islands or carries on business in the Cook Islands;
 - (iv) any other body corporate formed or incorporated in the Cook Islands (except a body incorporated or registered under this Act or the International Trusts Act 1984 or the International Partnership Act 1984;
- (b) any natural person who is a citizen or resident of or domiciled in the Cook Islands and any partnership or association of such persons.

"Local property" means -

- (a) any interest in land in the Cook Islands;
- (b) any interest in tangible personal property ordinarily situated in the Cook Islands;

- (c) any interest in a chose in action of or affecting either a local entity or local property;
- (d) any interest in a local entity.

"Onshore business" means -

- (a) any transaction or dealing, whether for pecuniary gain or otherwise, with a local entity (and whether with that local entity individually or with another person or persons); or
- (b) any investment, in acquisition of or dealing affecting local property or any interest therein,

but shall not include administrative onshore business.

(2) Any international company or foreign company which transacts onshore business (whether by way of an isolated transaction or of a continuing nature) shall be subject to the provisions of the Development Investment Act 1977.

(3) Nothing in this section shall be interpreted or construed as in any way limiting the right power or capacity of an international company or a foreign company (with or without prior approval) -

- (a) to deal with the Registrar in any manner contemplated by this Act or any other Act regulation by-law or rule made thereunder;
- (b) to deal with the Commission;
- (c) to institute or become a party to any action suit or other proceedings in the Court.

[Added Act 1988/6; Amended Act 1991/20; Act 1991/31]

250. **Exemption of non-resident recipients of income** - Notwithstanding the provisions of any other Act of the Cook Islands or any regulation, by-law or rule made thereunder, a person not ordinarily resident in the Cook Islands shall not be subject to the imposition of any fee, impost, tax, levy, dues or excise in relation to any income derived by the non-resident person, other than where the income is derived -

- (a) by that non-resident person in the course of carrying on business in the Cook Islands or through a permanent establishment of the non-resident in the Cook Islands;
- (b) by that non-resident person by way of dividend, interest, royalty or any other means of distribution, paid by a domestic company, other than a trustee company.

SCHEDULE 1
(Section 20)

THE POWERS OF AN INTERNATIONAL COMPANY

1. To carry on any business, other than a business which it is prohibited by the Act or the regulations from carrying on, which may seem to the company capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.
2. To enter into or be a party to any transaction or document.
3. To acquire, hold, dispose of or deal with any information or rights or property of any kind.
4. To acquire, hold, dispose of or deal with the whole or any part of the undertaking of any other company, association or business.
5. To dispose of or otherwise deal with the whole or any part of its undertaking or business.
6. To assume any duties, obligations or liabilities.
7. To acquire any rights or interests.
8. To provide or procure provision of any services.
9. To lend and borrow.
10. To procure its registration or recognition in any place outside the Cook Islands.
11. To create and extinguish liabilities and rights and interests.
12. To issue shares, debentures and options, and to take shares, debentures and options and to redeem and forfeit the same.
13. To employ or retain persons in and about its business or the business of any other company or person.
14. To give indemnities and guarantees and obtain indemnities and guarantees.
15. To take out insurance of all kinds whether over the property or rights of the company or not.
16. To promote any other company.
17. To make gifts, donations and wagers which may lawfully be made whether the same may, or may not, be for the purpose of advancing its business.
18. By way of settlement or other dealing or disposition, to give the right to a person not a member of the company to share in the whole or any part of its gains or profits to the exclusion of its members: Provided that in exercising such power no distribution of gains or profits shall be made pursuant to such settlement, disposition or other dealing which would exceed the amount properly distributable as a dividend or properly capable of being returned as capital surplus were such distribution a distribution to some or to all of the members of the company.
19. To do any of the things which it may do in association with any other person or company and as principal or agent or as a trustee or for its own benefit.
20. To promote any other business.
21. To do all such things as are incidental or conducive to the exercise of the other powers of the company.

22. To do all other things which are not prohibited by or under the Act or the regulations made thereunder or otherwise by the laws of the Cook Islands.

SCHEDULE 2
(Section 25)

TABLE A: ARTICLES FOR MANAGEMENT OF AN
INTERNATIONAL COMPANY

INTERPRETATION

1. In these Articles words and expressions, except in so far as the context or subject matter otherwise indicates or requires, shall have the same meaning as in the International Companies Act 1982 and further -

"secretary" means any person appointed to perform the duties of a secretary of the company;

"the Act" means the International Companies Act 1982;

"the office" means the registered office of the company in the Cook Islands;

"the seal" means the common seal of the company.

ISSUE OF SHARES

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares in the company may be issued by the directors or, in the case of a branch of the company established outside the Cook Islands, by the directors of the local board, in accordance with the provisions of the Act and any shares may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the directors, subject to any ordinary resolution of the company, determine.

BEARER SHARES

3. No share warrant shall be issued by the company except upon a request in writing by the person whose name is for the time being upon the register of members of the company as the holder of the share or stock in respect of which the share warrant is to be issued, and there shall be no objection that the request was signed by the person making the same before his name was entered in the register as such holder, provided always that a share warrant may be issued upon a request in writing by a person who subscribed the memorandum of the company in respect of one or more of the shares in respect of which he has subscribed the memorandum, notwithstanding the fact that the name of such subscriber has not been and will not be entered in the register of members as a shareholder.

4. No share warrant shall be issued in respect of any shares on which there is any unpaid liability.

5. A request to the company for the issue of a share warrant shall be in such form and authenticated by such statutory declaration or other evidence as to the identity of the person making the same and of his right or title to the share or stock as the directors shall from time to time require and shall be lodged at the office of the company.

6. Before the issue of a share warrant, the certificate, if any, then outstanding in respect of the share intended to be included in it shall be delivered up to the directors.

7. Share warrants shall be issued under the seal or the branch seal of the company or branch of the company established outside the Cook Islands and be signed by one director and the secretary or such other person as the directors may appoint for that purpose or, in the case of a branch, by a member of the local board or such other person as the directors may appoint for that purpose.

8. Each share warrant shall relate to such number of shares and be in such language and form as the directors may think fit. The number originally attached to each share shall be stated in the share warrant.

9. Coupons shall be issued payable to bearer, of such number as the directors shall think fit, providing for the payment of the dividends upon and in respect of the shares or stock provided for share warrants, and the directors shall provide, as they from time to time think fit, for the issue of fresh coupons to the bearers for the time being of share warrants when the coupons attached thereto shall be exhausted.

10. Each coupon shall be distinguished by the number of the share warrant to which it belongs and by a number showing the place it holds in the series of coupons belonging to the warrant. The coupons shall not be expressed to be payable at any particular period, nor shall they contain any statement as to the amount which shall be payable.

11. Upon any dividend being declared to be payable upon the shares specified in a share warrant, the directors shall publish an advertisement in any newspaper they shall think fit or otherwise give such notice as they think fit stating the amount per share or per centum payable, the date of payment and the serial number of the coupon to be presented; and thereupon any person presenting and delivering up a coupon of that serial number at the place or one of the places stated in the coupon or in the said advertisement shall be entitled to receive, at the expiration of such number of days not exceeding 28 days after so delivering it up as the directors shall from time to time direct, the dividend payable on the share certified in the share warrant to which the said coupon shall belong, according to the notice which shall have been given by advertisement or notice.

12. The company shall be entitled to recognise an absolute right in the bearer for the time being of any coupons so advertised as aforesaid for payment to such amount of dividend on the share warrant whereto the said coupon shall belong as shall have been as aforesaid declared payable upon presentation and delivery of the coupon and the delivery of such coupon shall be a good discharge to the company accordingly.

13. If any share warrant or coupon be worn out or defaced the directors may, upon the surrender thereof for cancellation, issue a new one in its stead.

14. If any share warrant or coupon be lost or destroyed the directors may, upon the loss or destruction being established to their satisfaction and upon such indemnity being given to the company as they shall think adequate, issue another share warrant or coupon in lieu thereof.

15. In every case provided for by Articles 13 and 14, a fee of \$10.00, exclusive of all expenses attending the investigation of evidence of loss or destruction and of an indemnity to the corporation, shall be paid to the company by the person availing himself of those Articles.

16. No person shall as bearer of a share warrant be entitled to attend or vote, or exercise in respect thereof any of the rights of a member, at any general meeting of the company, or sign any requisition for or aid in calling any general meeting, unless 7 days at least before the day appointed for the meeting, in the first case, and unless before the requisition is left at the office, in the second case, the Custodian of the share warrant shall have confirmed to the company in writing that that person is the bearer thereof entitled to the rights contained therein. The names of more than one as joint holders of a share warrant shall not be received.

17. There shall be delivered to the person confirmed by the Custodian to be the bearer a certificate stating the bearer's name and address and the number of shares or the amount of stock represented by the bearer's share warrant and a voting card specifying the number of votes which the warrant entitles him to cast at a specified general meeting. The production of such a voting card at that specified general meeting shall entitle the bearer thereof to attend and vote at that general meeting in the same way as if he were a registered member of the company in respect of the shares or stocks specified in the said certificate. The certificate may be as follows -

..... International Company

No.

This is to certify that of is entitled to attend the general meeting of the company to be held at on the day of 20....

DATED this day of 20....

.....

Secretary

18. In respect of general meetings no person as bearer of any warrant shall be entitled to exercise any of the rights of a member, save as hereinbefore expressly provided.

19. If the bearer of a share warrant wishes to have it surrendered he shall notify the company and the Custodian thereof. When the Custodian lodges the share warrant together with the name and address of the bearer thereof the bearer shall be entitled to have his name entered as a member in the register of members of the company in respect of the shares specified in the share warrant so surrendered.

20. Every share warrant shall be transferable in accordance with these articles and the provisions of the Act.

REDEEMABLE SHARES

21. Subject to the Act, any shares may be redeemable shares and such shares shall be liable to be redeemed by the company. Until the directors otherwise resolve, such shares shall be redeemable upon the repayment of the amount paid up thereon. Such shares shall be classified as redeemable shares and shall be referred to as such in any certificate if issued or warrant relating to such shares and in the register of members.

[Amended Act 2006/3]

SHARE CAPITAL AND VARIATION OF RIGHTS

22. If at any time the share capital is divided into different classes of shares, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may, whether or not the company is being wound up, be varied by special resolution of the company with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Articles relating to general meetings shall apply mutatis mutandis, but so that the necessary quorum shall be 2 persons at least holding or representing by proxy one-third of the issued shares of the class and so that any holder of shares of the class present in person or by proxy may demand a poll.

23. The rights conferred upon the holders of shares of any class issued with preferred or other special rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith or in priority thereto.

24. The company may exercise the powers of paying commissions of the kind referred to in section 49 of the Act provided that the rate per centum, or the amount of the commission paid or agreed to be paid, shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10 per centum of the price at which the

shares in respect whereof the same is paid are issued or an amount equal to 10 per centum of that price, as the case may be, unless the amount or rate of commission proposed to be paid has at least 21 days before payment been notified to all persons entitled to receive notices of general meetings and no such person has objected in writing. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on the issue of shares pay such brokerage as may be lawful.

25. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or unit of a share or, except only as by these Articles or by law otherwise provided, any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

26. Every person whose name is entered as a member in the register of members shall upon making a request pursuant to section 63 of the Act be entitled without payment to receive a certificate under the seal of the company in accordance with the Act but in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one or several joint holders shall be sufficient delivery to all such holders.

[Amended Act 2006/3]

27. The company shall have a first and paramount lien on every share for all money, whether presently payable or not, called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares registered in the name of a single person for all money presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The company lien, if any, on a share shall extend to all dividends payable thereon.

28. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

29. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

30. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES

31. The directors may from time to time, in respect of shares having a par value, make calls upon the members in respect of any money unpaid on their shares, whether on account of the nominal value of the shares or by way of premium, and not by the conditions of allotment thereof made payable at fixed times and each member shall, subject to receiving at least 28 days' notice specifying the time or times and place of payment, pay to the corporation at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

32. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call

was passed and may be required to be paid by instalments.

33. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

34. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding ten per centum per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.

35. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these Articles be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these Articles as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

36. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

37. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may, until the same would but for the advance become payable, pay interest at such rate not exceeding, unless the members of the company in general meeting or by writing signed by them shall otherwise direct, ten per centum per annum as may be agreed upon between the directors and the members paying the sum in advance.

TRANSFER OF SHARES

38. Subject to these Articles, any member may transfer all or any of his shares other than bearer shares by instrument in writing in any usual or common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of both the transferor and the transferee; and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

39. The instrument of transfer must be left for registration at the office of company together with such fee as the directors from time to time may require accompanied by such other evidence as the directors may reasonably require (including, where issued, any share certificate) to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these Articles register the transferee as a shareholder and retain the instrument of transfer.

[Amended Act 2006/3]

40. The directors may decline to register any transfer of shares on which the company has a lien.

TRANSMISSION OF SHARES

41. In case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by him with other persons.

42. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by

him registered as the transferee thereof, but the directors shall in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death, bankruptcy or insolvency.

43. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice of transfer were a transfer signed by that member.

44. Where the registered holder of any shares dies or becomes bankrupt or insolvent his personal representative or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights whether in relation to meetings of the corporation or to voting or otherwise, as the registered holder would have been entitled to if he had not died or become bankrupt or insolvent; and where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these Articles, be deemed to be joint holders of the share.

FORFEITURE OF SHARES

45. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

46. The notice shall name a further day, not earlier than the expiration of twenty-eight days from the date of service of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

47. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

48. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

49. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding remain liable to pay to the company all money which, at the date of forfeiture, was payable by him to the company in respect of the shares, together with interest at the rate of ten per centum per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of such interest, but his liability shall cease to the extent that the company receives payment of money in respect of the shares.

50. A declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

51. The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference

to the forfeiture, sale or disposition of the share.

52. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.

53. A company shall not be liable to account to the person whose shares have been forfeited as aforesaid for any consideration received by it on the sale or other disposition of the forfeited shares in excess of the liability of that person to the company and the company shall be entitled to retain any such excess for its own use and benefit but the directors may resolve to pay any such excess over to the person whose shares were forfeited or to his personal representative or assigns.

ALTERATION OF CAPITAL

54. The company may from time to time by special resolution -

- (a) increase the share capital by such sum to be divided into shares of such amount, or may increase the number of its shares of no par value to such number, as the resolution shall prescribe; and
- (b) increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares, any new shares shall be subject to the same provisions as to transfer, transmission, and otherwise as the shares in the original capital.

55. The company may, by special resolution -

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares, or consolidate and reduce the number of the issued shares of no par value;
- (b) increase the number of its issued no par value shares without an increase of its stated capital;
- (c) subdivide its existing shares or any of them into shares of smaller amount than is fixed by its memorandum;
- (d) convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value;
- (e) convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value;
- (f) cancel any shares which, to the date of the passing of the resolution, have not been taken by any person or which no person has agreed to take;
- (g) reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised and consent required by law;
- (h) convert its issued preference shares into shares which can be redeemed.

GENERAL MEETINGS

56. Any director may, whenever he thinks fit, convene a general meeting, and general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.

57. Subject to the provisions of the Act and these Articles relating to special resolutions and agreements for shorter notice, 14 days' notice at the least, inclusive of the day for which notice is given, specifying the place, the day and the hour of the meeting and the general nature of the business to be considered thereat shall be given to such persons as are entitled to receive such notice from the company.

PROCEEDINGS AT GENERAL MEETING

58. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, 1 member holding more than 50 per centum of the issued shares giving the right to attend and vote at general meetings or 2 members present shall be a quorum. For the purposes of this Article, "member" includes a person attending as a proxy or as representing a company which is a member or as representing the committee, trustee or other person having the management of the estate of a person who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law of the Cook Islands relating to mentally-disordered persons.

59. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.

60. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

61. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

62. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is before or on the declaration of the result of the show of hands, demanded by any member present in person, by representative or by proxy. Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

63. If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

64. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not have a second or casting vote.

65. Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members, each member entitled to vote may vote in person or be represented and vote by proxy or by attorney and on a show of hands every person present who is a member or representative of a member shall have one vote, and on a poll every member present in person or by representative shall have one vote for each share he holds.

66. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be

accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

67. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons may be represented by and vote, whether on a show of hands or on a poll, by his committee or by his trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by representative or proxy.

68. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

69. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

70. The instrument appointing a proxy shall be in writing, in the common or usual form, under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a company, under seal or under the hand of an officer or attorney duly authorised. A proxy may but need not be a member of the company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit -

..... International Company

I/we, of being a member/members of the abovenamed company, hereby appoint

..... of

or, failing him,

of..... as my/our proxy to vote for me/us on my/our behalf at the general meeting of the company to be held on the day of19....., and at any adjournment thereof.

SIGNED this day of19.....

This form is to be used *(In favour of/against) the resolution.

* Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

72. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a photostat copy of that power or authority, shall be deposited at the office of the company, or at such other place within the Cook Islands as is specified for that purpose in the notice convening the meeting, not less than 5 days before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 5 days before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

73. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, unsoundness of mind, revocation or transfer as aforesaid has been received by the company at its office before the commencement of the meeting or adjourned meeting at which the instrument is used.

74. The holder of a bearer share shall be entitled to vote only accordance with Article 17.

75. A resolution or special resolution may be in writing passed in accordance with the provisions of section 94(6) of the Act and any resolution in writing contained in the one instrument or in several instruments in like form signed by the members, other than holders of share warrants, holding together more than 75 per centum of the voting rights of the shares having voting rights at a general meeting of the company, of which resolution notice has been given in the manner in which notices of general meetings should be given, shall be as valid as a resolution or special resolution passed at a general meeting of the company.

DIRECTORS' APPOINTMENT ETC.

76. The number of the directors, the names of the first directors and the fees, if any, of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

77. The corporation may from time to time by ordinary resolution increase or reduce the number of directors.

78. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these Articles.

79. The company may by ordinary resolution remove any director and may by ordinary resolution appoint another person in his stead.

80. The remuneration of the directors may be fixed or varied by the company by ordinary resolution and shall be deemed to accrue from day to day; the directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or of any committee of the directors or general meetings of the company or in connection with the business of the company.

81. The directors shall not be required to hold any shares in the company. A director may be a company whether incorporated in the Cook Islands or elsewhere, and may act as such through a representative or delegate appointed from time to time by written notice lodged with the secretary.

82. The office of director shall become vacant if the director -

- (a) ceases to be a director by virtue of the Act;
- (b) within the Cook Islands or elsewhere is adjudged bankrupt or insolvent or makes any arrangement or compromise with his creditors generally;
- (c) becomes prohibited from being a director by reason of any order made under the Act;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons; or
- (e) resigns his office by notice in writing to the company.

POWERS AND DUTIES OF DIRECTORS

83. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and incorporating the company and may exercise all such powers of the company as are not, by the Act or by the Articles, required to be exercised by the company in general meeting, subject nevertheless to any of these Articles

and to the provisions of the Act.

84. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the company or of any third party.

85. The directors may exercise all the powers of the company in relation to any seal for use outside the Cook Islands and in relation to branch registers and may provide for the establishment of branches of the company outside the Cook Islands in accordance with the provisions of the Act.

86. The directors may from time to time by power of attorney appoint any company, firm or person or body of persons to be the attorney or attorneys of the company in accordance with Section 29(3) of the Act.

87. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors from time to time determine.

88. The directors shall cause minutes to be made -

- (a) of all appointments of officers;
- (b) of the names of the directors present at all meetings of the company and of the directors; and
- (c) of all proceedings at all meetings of the company and of the directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

89. All resolutions in writing signed by members or directors pursuant to the provisions in that behalf contained in these Articles shall be entered in the minute book containing minutes of the meetings of the company or of the directors respectively.

PROCEEDINGS OF DIRECTORS

90. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. A director may at any time, and the secretary shall on the requisition of a director, summon a meeting of the directors.

91. Subject to this Articles, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairman of the meeting shall have no second or casting vote.

92. A director may vote and be counted in the quorum in respect of any contract or proposed contract with the company in which he is in any way interested or on any matter arising thereout, and no contract entered into by the company in which a director is in any way interested shall by reason thereof be voidable and no director shall be liable to account to the company for any profits realised by such contract or any office of profit held by him by reason of his being a director.

93. Any director, with the approval of the directors, may appoint any person, whether a member of the company or not, to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall

not be required to hold any share qualification, and shall *ipso facto* vacate office if the appointor vacates office. Any appointment or removal under this Article shall be effected by notice in writing under the hand of the director making the same.

94. The quorum necessary for the transaction of the business of the directors may be fixed by the directors; but until so fixed it shall be one less than the total number of directors unless the total number of directors is less than 3, when the quorum shall be all the directors.

95. The directors may act notwithstanding any vacancy in their body or failure to appoint the total number of directors fixed by or under these Articles but, if and so long as their number is less than the number fixed by or under these Articles as the necessary quorum of directors, the directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

96. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

97. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

98. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

99. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in the case of an equality of votes the chairman shall have no second or casting vote.

100. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified or had never been qualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

101. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

MANAGING DIRECTORS

102. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment but such appointment shall be automatically determined if the appointee ceases from any cause to be a director.

103. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission or participation in profits, or partly in one way and partly in another, as the directors may determine.

104. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

RESIDENT DIRECTOR

105. The directors may appoint a resident director of the company for such term and at such remuneration and upon such conditions as the other directors and the resident director agree. Any resident director so appointed may be removed by the directors.

RESIDENT SECRETARY

106. The resident secretary shall, in accordance with the Act, be appointed by the directors for such term and at such remuneration and upon such conditions as the directors and the resident secretary shall agree. The directors may appoint a general secretary or other secretaries in addition to the resident secretary and subject to the Act fix their respective duties and functions. Any secretary may be removed by the directors subject to the provisions of the Act.

SEAL

107. The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by or on behalf of a director or by some other person appointed by the directors for the purpose. The directors shall provide for the safe custody of official seals and for the persons by whom any such seal is to be affixed.

ACCOUNTS

108. The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance sheets as required by the Act and shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the company or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any account or book or paper of the company except as conferred by any written law or authorised by the directors or by the company in general meeting.

DIVIDENDS AND RESERVES

109. The directors may declare dividends.

110. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

111. No dividend shall be paid otherwise than out of profits and no dividend shall bear interest against the company.

112. The directors may, before declaring any dividend, set aside out of the profits of the company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested in such investments as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

113. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this Article as paid on the share. All dividends shall be appropriate and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any

share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

114. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

115. Any dividend may be paid wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of the company or of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

116. Any dividend, interest or other money payable in cash in respect of registered shares may be paid by cheque or warrant sent through the post directed to the registered office of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

PURCHASE OF OWN SHARES

117. The company may be authority of a special resolution purchase its own shares in any manner permitted by the Act.

CAPITALISATION OF PROFITS

118. The directors may resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportion, on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid or partly in the one way and partly in the other.

119. Whenever such a resolution as aforesaid shall have been passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional shares or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

[Amended Act 2006/3]

NOTICES

120. A notice may be given by the company to any member either personally or by sending it by post to him at his

registered address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting, by airmail if the address is outside the Cook Islands, a letter containing the notice and to have been effected 10 days after the date of its posting.

121. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

122. A notice may be given by the company to the persons entitled to a share in consequence of the death, bankruptcy or insolvency of a member by sending it through the post in a prepaid letter, by airmail if the address is outside the Cook Islands, addressed to them by name, or by the title of representatives of the deceased or assignee of the bankrupt or insolvent or by a like description at the address, if any, supplied for the purpose by the persons claiming to be so entitled or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death, bankruptcy or insolvency had not occurred.

123. (1) Notice of every general meeting shall be given in any manner hereinbefore authorised to -

- (a) every member, other than holders of share warrants, except those members who have not supplied to the company an address for the giving of notices to them;
- (b) every person entitled to a share, other than a bearer share, in consequence of the death, bankruptcy or insolvency of a member, who but for this death, bankruptcy or insolvency would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company.

(2) Subject to the provisions of paragraph (3) of this Article, no other person shall be entitled to receive notice of general meetings.

(3) If pursuant to the terms of issue thereof there is endorsed on any share warrant issued by the company a statement that notices of general meetings of the company shall be advertised in a particular manner, notices of all general meetings shall while any such warrant is outstanding also be given by advertisement in such manner.

WINDING UP

124. If the company is wound up, the liquidator may divide amongst the members in kind the whole or any part of the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

INDEMNITY

125. The Directors, Secretary and other officers or servants for the time being of the company, for the time being acting in relation to any of the affairs of the company and each of them, and each of their heirs, administrators and executors, shall be indemnified and secured harmless out of the assets and profits of the company from and against all actions, costs, charges, losses, damages and expenses, which they or any of them, their or any of their heirs, administrators or executors, shall or may incur or sustain by reason of any contract entered into or any act done, concurred in, or omitted in or about the execution of their duty or supposed duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own wilful act, neglect or default respectively, and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the company and have priority as against the members over all other claims. None of the foregoing shall be answerable for the acts,

neglects, or defaults of the other or others of them, or for any bankers, brokers, or other persons into whose hands any money or assets of the company may come, or for any defects of title of the company to any property purchased, or for insufficiency or deficiency of or defect of title of the company to any security upon which any moneys of or belonging to the company shall be placed out or invested, or for any loss, misfortune or damage resulting from any such cause as aforesaid, or which may happen in the execution of their respective offices or trust, or in relation thereto, unless the same shall happen by or through their own wilful act, neglect or default respectively.

ALTERATION OF MEMORANDUM

126. The company may, by special resolution, alter the provisions of its memorandum of association, including those with respect to the objects of the company, in accordance with the procedure specified in Section 19 of the Act.

[Amended Act 1989/22]

(Section 57)

TABLE B: TERMS OF DEBENTURE OF A COMPANY

1. This Debenture secures the principal sum shown on its face payable in dollars.
2. The principal sum is payable on demand by the Debenture Holder.
3. Until repayment, this Debenture will carry interest at the rate (if any) shown on the face of this Debenture on the principal sum, payable yearly.
4. The company is not entitled to redeem this Debenture without the Holder's consent.
5. The provisions of the International Companies Act 1982 and of the Articles of the company giving the members or any class of the members of the company the right and power to vote and to demand a poll shall, so far as they relate to the company for the period while this Debenture is unredeemed, be suspended and of no effect for any purpose whatsoever and the provisions contained in the Act shall apply.

[Amended Act 1986-87/26]

This Act is administered by the Financial Supervisory Commission

**SOUTHPAC
TRUST
LIMITED**

**INTERNATIONAL
COMPANIES
ACT 1981-82**

as amended

**1986-87, 1987, 1988
1989, 1990, 1991, 1991
No.2 2003, 2004 & 2005**

1 June 2004