

COMPANIES BILL 2015  
(BILL NO. 3 OF 2015)

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**BILL NO. 3 OF 2015**

**A BILL**

FOR AN ACT TO REGULATE COMPANIES IN THE REPUBLIC OF FIJI

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

*Short title*

1. This Act may be cited as the Companies Act 2015.

*Commencement*

2. This Act shall come into force on the date appointed by the Minister by notice published in the *Gazette*.

*Interpretation*

3. In this Act, unless the context otherwise requires,—

“Accounting Standards” means the accounting standards issued or recommended by the Fiji Institute of Accountants under the Fiji Institute of Accountants Act (Cap. 259) and subsidiary rules from time to time, and in regulations made under this Act and published in the *Gazette*, or a provision of those standards;

“Affairs”, in relation to a Company, includes—

- (a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with any other person or persons and including transactions and dealings as agent, bailee or trustee), Property (whether held alone or jointly with any other person or persons and including Property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with any other person or persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the Company;
- (b) in the case of a Company (not being an authorised trustee Corporation) that is a trustee (but without limiting the generality of paragraph (a)) – matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the Company, or to or in relation to the Company or its business or Property, at a time when—
  - (i) a Receiver or Manager is in possession of, or has control over, Property of the Company;
  - (ii) the Company is under administration;
  - (iii) a deed of company arrangement executed by the Company has not yet terminated;
  - (iv) a compromise or arrangement made between the Company and any other person or persons is being administered; or
  - (v) the Company is being wound up; and,without limiting the generality of the foregoing, any conduct of such a Receiver or Manager, or of a liquidator or provisional liquidator of the Company;
- (d) the ownership of Shares in, Debentures of, and Interests in a Managed Investment Scheme made available by, the Company;
- (e) the power of persons to exercise, or to control the exercise of, the rights to vote attached to Shares in the Company or to dispose of, or to exercise control over the disposal of, such Shares;

- (f) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the Company or are or have been able to control or materially influence the policy of the Company;
- (g) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, Shares in, Debentures of, or Interests in a Managed Investment Scheme made available by, the Company;
- (h) where the Company has made available Interests in a Managed Investment Scheme – any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and
- (i) matters relating to, or arising out of the audit of, or working papers or reports of an Auditor concerning, any matters referred to in a preceding paragraph;

“Agent” does not include a person’s barrister or solicitor acting as such;

“AGM” means an Annual General Meeting of a Company that section 170 requires to be held;

“Annual Report” means, in relation to a Company or Managed Investment Scheme—

- (a) its Financial Statements for the Financial Year;
- (b) its Directors’ Report for the Financial Year; and
- (c) the Auditor’s Report on the Financial Statements;

“Approved Scheme Deed” has the meaning given by section 330;

“Articles of Association” means the Articles of Association of the Company adopted and modified in accordance with sections 46 and 48;

“Associate” means, in relation to a person or body corporate, any other person or body corporate who or which is controlled by, or which a reasonable person would consider likely to be controlled by, the first named person or body corporate, or to act in concert with that first named person or body corporate, and “Control” as it relates to a body corporate means Control as defined in this section;

“Audit” means an audit conducted for the purposes of this Act and includes a review of a financial report for a half-year conducted for the purposes of this Act;

“Auditing Standards” means the auditing standards issued or recommended by the Fiji Institute of Accountants under the Fiji Institute of Accountants Act (Cap. 259) and subsidiary rules from time to time, or a provision of those standards;

“Auditor” means a natural person registered as an auditor under Part 33;

“Auditor’s Report” means a report prepared in accordance with section 396;

“Authorised Share Capital” means the dollar value representing the total number of shares the Company or Existing Company is authorised to issue, multiplied by the Par Value of the shares;

“Bearer Share” or “Bearer Stock” means a negotiable instrument evidencing the legal ownership of Shares;

“Bidder” has the meaning given by section 255;

“Bidder’s Statement” means a bidder’s statement required under Part 22;

“Books” includes—

- (a) a register;
- (b) Financial Reports or Financial Records, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information;

“Broker” means a person who carries on the business of buying and selling of Securities as an agent for investors in return for a commission;

“Business Day” means a day that is not a Saturday, a Sunday or a public holiday or Financial Institution holiday in the place concerned;

“Business Name” means the name or style under which any business is carried on whether in partnership or otherwise;

“Buy-Back” by a Company means the acquisition by the Company of Shares in itself;

“Buy-Back Agreement” by a Company means an agreement by the Company to buy back its own Shares (whether the agreement is conditional or not);

“Capital Redemption Reserve Fund” means the amount of distributable profits equal to the redemption amount put aside in its accounts as quasi share capital where Redeemable Preference Shares are redeemed otherwise than out of the proceeds of a new issue of Shares in a Company Limited by Shares;



“Carrying on Business” or “Carry on Business” means to have a place of business in Fiji which carries on business in Fiji, however, a person must not be regarded as Carrying on Business in Fiji for the reason only that the person—

- (a) carries on the business as a trustee in bankruptcy or a Receiver or Manager appointed by any Court;
- (b) acquired Property as a joint tenant or tenant in common whether or not the owners share any profits arising from the sale of the Property;
- (c) 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;
- (d) maintains an account at a Financial Institution;
- (e) effects any sale through an independent contractor;
- (f) creates evidence of any debt or creates a Charge on real or personal Property;
- (g) secures or collects any of the person’s debts or enforces the person’s rights in regard to any securities relating to such debts;
- (h) solicits or procures an order that becomes a binding contract only if the order is accepted outside Fiji;
- (i) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time; or
- (j) invests any of the person’s funds or holds any Property;

“Central Depository” means a Company approved by the Reserve Bank in consultation with the Minister to—

- (a) establish and operate a system for the central handling of Listed Securities—
  - (i) whereby all such Listed Securities are deposited with and held in custody by, or registered in the name of, the Company or its nominee Company for the depositors and dealings in respect of these Listed Securities are effected by means of entries in Listed Securities accounts without the physical delivery of scrips; and
  - (ii) which permits or facilitates the settlement of Listed Securities transactions or dealings in Listed Securities without the physical delivery of scrips; and
- (b) provide any other incidental facilities and services;

“Charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether on demand or otherwise;

“Chargee”, in relation to a Charge, means—

- (a) in any case – the holder, or all or any of the holders, of the Charge;  
or
- (b) in the case of a Charge that is an agreement to give or execute a Charge in favour of a person or persons, whether upon demand or otherwise – that person, or all or any of those persons;

“Charges Register” means the register of Charges referred to in section 379;

“Civil Penalty Provision” has the meaning given in section 636(1);

“Class” has—

- (a) in relation to Shares or Interests in a Managed Investment Scheme – a meaning affected by section 10; and
- (b) when used in relation to Shares – the meaning affected by Division 3 of Part 17.

“commencement date” means the date on which this Act comes into force;

“Company” means a company formed and registered under this Act or an Existing Company;

“Company Limited by Guarantee” means a Company formed on the principle of having the liability of its Members limited to the respective amounts that the Members undertake to contribute to the Property of the Company if it is wound up;

“Company Limited by Shares” means a 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;

“Company Limited by Shares and Guarantee” means a Company Limited by Guarantee which also has Share capital;

“Companies Contingency Fund” means the fund referred to in section 511 or such other fund prescribed under that section;

“Companies Liquidation Account” means the account referred to in section 511 or such other account prescribed under that section;

“Control” has the meaning given by section 9;

“Convertible Securities” means Securities which are convertible into another class of Securities by the exercise of rights attached to the former;

“Court” means the High Court of Fiji;

“Creditors’ Voluntary Winding Up” has the meaning given in section 578(3);

“Debenture” of an entity means any debenture stock, bond or any chose in action that includes an undertaking by the entity to repay as a debt, money deposited with or lent to the entity. The chose in action may, but need not, include a Charge over Property of the entity to secure repayment of the money. However, a debenture does not include—

- (a) an undertaking to repay money deposited with or lent to the entity by a person if the—
  - (i) person deposits or lends the money in the ordinary course of a business carried on by the person; and
  - (ii) entity receives the money in the ordinary course of carrying on a business that neither comprises nor forms part of a business of borrowing money and providing finance;
- (b) an undertaking by a Financial Institution in Fiji to repay money deposited with it, or lent to it, in the ordinary course of its banking business;
- (c) an undertaking to pay money under—
  - (i) a cheque;
  - (ii) an order for the payment of money;
  - (iii) a bill of exchange; or
  - (iv) an undertaking by a Company to pay money to a related entity; or
- (d) an undertaking to repay money that is prescribed by regulations made under this Act;

“Debenture Holder” means a person who holds an interest in a Debenture;

“Deregistered” in relation to a Company, means deregistered under Part 41;

“Director” of a Company means—

- (a) a person who is appointed to the position of—
  - (i) a director; or
  - (ii) an alternate director and is acting in that capacity, regardless of the name that is given to their position; and
- (b) unless the contrary intention appears, a person who is not validly appointed as a director if—
  - (i) they act in the position of a director; or

- (ii) the directors of the Company or body are accustomed to act in accordance with the person's instructions or wishes;

“Directors’ Report” means a report prepared in accordance with section 392(2);

“Disclosure Document” means a Prospectus, Offer Document, Bidder’s Statement or Target’s Statement;

“Employee Share Scheme” for a Company means a scheme under which Shares (or units in Shares or options to acquire unissued Shares) in the Company may be acquired—

- (a) by, or for the benefit of—
  - (i) employees of the Company, or of a Related Body Corporate; or
  - (ii) Directors of the Company, or of a Related Body Corporate, who hold a salaried employment or office in the Company or in a Related Body Corporate; or
- (b) by a Company all of whose Members are—
  - (i) employees of the Company, or of a Related Body Corporate; or
  - (ii) Directors of the Company, or of a Related Body Corporate, who hold a salaried employment or office in the Company or in a Related Body Corporate;

“Equal Buy-Back” has the meaning given by section 221;

“Existing Company” means a company or foreign company formed and registered under any of the Repealed Acts;

“Financial Institution” means any bank within the meaning of the Banking Act 1995, credit union registered under the Credit Union Act (Cap. 251) or any friendly society registered under the Friendly Societies Act (Cap. 253);

“Financial Records” includes—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain—
  - (i) the methods by which Financial Statements are made up; and
  - (ii) adjustments to be made in preparing Financial Statements;

“Financial Statements” means—

- (a) unless paragraph (b) applies, such financial statements as are required by Accounting Standards in relation to the Company or Managed Investment Scheme, including the notes to those financial statements; or
- (b) if the Accounting Standards require the Company or Managed Investment Scheme to prepare financial statements in relation to a consolidated entity, the financial statements specified in paragraph (a) prepared in relation to the consolidated entity as required by the Accounting Standards;

“Financial Year” means, in relation to any Company or a Managed Investment Scheme, the Financial Year as determined in accordance with section 407;

“Firm” means an unincorporated body of two or more individuals or one or more individuals, including, but not limited to a partnership as defined under the Partnership Act (Cap. 248) and one or more Companies or two or more Companies who have entered into partnership with one another with a view to Carrying on Business for profit;

“Foreign Company” means—

- (a) a Company that is incorporated outside Fiji—
  - (i) which, on or after 1 January 1984, establishes a place of business within Fiji; or
  - (ii) which has, before that date established a place of business within Fiji and continues to have a place of business within Fiji on and after that date; or
- (b) an unincorporated body that—
  - (i) is formed outside Fiji;
  - (ii) under the law of its place of formation, may sue or be sued, or may hold Property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
  - (iii) does not have its head office or principal place of business in Fiji; and
  - (iv) which, on or after 1 January 1984, establishes a place of business within Fiji; or
  - (v) which has, before that date established a place of business within Fiji and continues to have a place of business within Fiji on and after that date;

“General Meeting” means—

- (a) in relation to a Company, a meeting of Members called under Part 14; and
- (b) in relation to a Managed Investment Scheme, a meeting of Members of the Managed Investment Scheme called under Part 29;

“Government Entity” has the meaning given to it under section 3 of the Public Enterprise Act 1996;

“Holding Company”, in relation to a Company, means a Company of which the first Company is a Subsidiary;

“Individual” means a natural person and does not include a Company or Foreign Company;

“Insolvent”, in relation to a person, means the person is not Solvent, and “Insolvency” has the related meaning;

“Interest” in a Managed Investment Scheme means a beneficial interest in the money, investments and other Property that are subject to the trust deed governing that Managed Investment Scheme;

“Investment Adviser” means a person who—

- (a) carries on business of advising others concerning Securities;
- (b) issues or promulgates analyses or reports concerning Securities; or
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of Securities for the purpose of investment;

“Large Private Company” means a Private Company which is a large Private Company in accordance with section 19;

“Listed” means a Company, Managed Investment Scheme or other body is listed if it is included in the official list of a Securities Exchange operated in Fiji;

“Listing Rules” of a Securities Exchange, or proposed Securities Exchange, means any rules, however described, that are made by the operator of the market, or contained in the operator’s Articles of Association, and that deal with—

- (a) admitting entities to, or removing entities from, the official list of the Securities Exchange, whether for the purpose of enabling Listed Securities of those entities to be traded on the Securities Exchange or for other purposes; or
- (b) the activities or conduct of entities that are included on that list;

“Listed Securities” means Shares or Debentures in a Listed Company, or an Interest in a Listed Managed Investment Scheme;

“Local Agent”, in relation to a Foreign Company, means a resident in Fiji authorised to accept, on behalf of the Foreign Company, service of process and any notice required to be served on the Foreign Company;

“Lodge” means lodge with the Registrar, or Reserve Bank, as applicable, in Fiji, and “Lodgement” has the related meaning;

“Managed Investment” or “Managed Investment Scheme” means—

(a) a scheme established under this Act that has the following features—

- (i) people contribute money or money’s worth as consideration to acquire rights (“interests”) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);
- (ii) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in Property, for Members who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders); and
- (iii) the Members do not have day-to-day control over the operation of the scheme, whether or not they have the right to be consulted or to give directions; or

(b) a Time Sharing Scheme,

but does not include the following—

- (i) interests in any insurance policy;
- (ii) interests in village soli investments;
- (iii) interests in any credit union registered under the Credit Unions Act (Cap. 251);
- (iv) interests in any friendly society registered under the Friendly Societies Act (Cap. 253);
- (v) a scheme in which all the Members and the Company that promotes the scheme are Related Bodies Corporate;
- (vi) a franchise;
- (vii) a scheme operated by a Financial Institution licensed to operate in Fiji in the ordinary course of its banking business;
- (viii) the issue of Debentures or convertible notes by a Public Company;

- (ix) a barter scheme under which each participant may obtain goods or services from another participant for consideration that is wholly or substantially in kind rather than in cash; or
- (x) any investment by a trustee Corporation under the provisions of the Trustee Corporations Act (Cap. 66);

“Manager”, in relation to—

- (a) Property of a Company or Foreign Company, means a person who manages, or under the terms of the person’s appointment has the power to manage, the Affairs of the Company or the Foreign Company; or
- (b) a Managed Investment Scheme, means the Public Company (however described) in which is vested the powers and functions of the manager of the Managed Investments Scheme under this Act;

“maximum imprisonment term” means the maximum imprisonment term for an offence committed under a provision of this Act prescribed by the Minister under section 713;

“maximum penalty” means the maximum penalty for a contravention of a provision of this Act prescribed by the Minister under section 713;

“Medium Private Company” means a Private Company which is a Medium Private Company in accordance with section 19;

“Member”—

- (a) in relation to a Managed Investment Scheme – means a person who holds an Interest in a Managed Investment Scheme; or
- (b) in relation to a Company – means a person who—
  - (i) is a member of the Company on its registration;
  - (ii) agrees to become a member of the Company after its registration and their name is entered on the register of members; or
  - (iii) becomes a member of the Company under Part 8 (membership arising from conversion of a Company from a Company Limited by Guarantee to a Company Limited by Shares);

“Members’ Voluntary Winding Up” has the meaning given in section 578(3);

“Minister” means the Minister responsible for companies;

“Negative Solvency Resolution” means a resolution by the Directors of a Company that, in their opinion, there are no reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable;

“Offer Document” means an offer document required under Part 26;



“Offer to the Public” includes a reference to, or to the making of, an offer to any section of the public or to, or to the issuing of, an invitation to any section of the public, as the case may be, whether selected as clients of the person making the offer or issuing the invitation or in any other manner and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the invitation is issued, but a bona fide offer or invitation is not taken to be an offer or invitation to the public if it is—

- (a) a personal offer of Shares, Debentures or an Interest in a Managed Investment Scheme made only to—
  - (i) a Related Party or Related Body Corporate of the seller; or
  - (ii) a person whose principal business is the investment of money or to buy or sell Shares, Debentures or Interests in Managed Investment Schemes, whether as principal or agent;
- (b) a personal offer that is made to not more than 10 members of the public or if the personal offer is made to more than 10 members of the public, the offer is made with a view to it being accepted by not more than 10 members of the public in any 6 month period;
- (c) an invitation to a person to enter a bona fide underwriting or sub-underwriting agreement with respect to the sale of Shares, Debentures or an Interest in a Managed Investment Scheme;
- (d) an offer or invitation issued to existing Members or Debenture Holders of a Company and relates to Shares in, or Debentures of, that Company;
- (e) an offer or invitation to subscribe for Securities where the amount to be purchased by each person to whom the offer or invitation is addressed is at least \$200,000;
- (f) a takeover offer; or
- (g) an offer for sale of Listed Securities on the Securities Exchange;

“Officer” of a Company means—

- (a) a Director or Secretary of the Company;
- (b) a person—
  - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
  - (ii) who has the capacity to affect significantly the Company’s financial standing; or

(iii) in accordance with whose instructions or wishes the Directors of the Company are accustomed to act, excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company; or

(c) a Receiver or Manager, of the Property of the Company;

(d) a liquidator of the Company; or

(e) a trustee or other person administering a compromise or arrangement made between the Company and someone else;

“Official Receiver” means the official receiver attached to the Court for bankruptcy purposes, the deputy official receiver attached to the Court for bankruptcy purposes, or such officer as is appointed under section 533 to be the official receiver;

“Par Value” means the nominal or face value arbitrarily attributed by a Company to a share at the time the share was initially issued to subscribers;

“Prescribed Amount” means the amount prescribed by the Minister under section 713;

“Prescribed Form” means the form prescribed by the Minister under section 713;

“Prescribed Registration Fee” means the registration fee amount prescribed by the Minister under section 713;

“Private Company” has the meaning given by section 16;

“Proforma Financial Statements” means proforma financial statements in the Prescribed Form in relation to the Company or Managed Investment Scheme;

“Property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action wherever it is situated (whether in Fiji or elsewhere);

“Prospectus” means a prospectus required under Part 26;

“Public Company” has the meaning given by section 15;

“Public Document” means an instrument of, or purporting to be signed, issued or published by or on behalf of, the Company and includes (without limitation) a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the Company;

“Receiver” means either—

- (a) a receiver of Property of a Company or Foreign Company, who does not manage, and does not have the power to manage, the Affairs of the Company or the Foreign Company; or
- (b) a Receiver and Manager;

“Receiver and Manager” means a receiver of Property of a Company or Foreign Company who also manages, or under the terms of the receiver’s appointment, has the power to manage, the Affairs of the Company or the Foreign Company;

“redeemable preference shares” means preference shares that are issued on the terms that they are liable to be redeemed and they may be redeemable at—

- (a) a fixed time or upon the occurrence of a particular event;
- (b) the Company’s option; or
- (c) the Member’s option.

“Registered Office”, in relation to a Company or Foreign Company, means the Company or Foreign Company’s registered office respectively which is required under this Act;

“Registered Offer Document” means an Offer Document registered with the Reserve Bank under Part 26;

“Registered Prospectus” means a Prospectus registered with the Reserve Bank under Part 26;

“Registered Bidder’s Statement” means a Bidder’s Statement registered with the Reserve Bank under Part 22;

“Registered Target’s Statement” means a Target’s Statement registered with the Reserve Bank under Part 22;

“Registrar” means the Registrar of Companies appointed under section 12(2) of this Act, the deputy registrar or any assistant registrar or other officer performing the role of the Registrar of Companies under this Act;

“Related Body Corporate”, in relation to a Company, means a Company that is related to the first-mentioned Company by virtue of section 6;

“Receiver” means either—

- (a) a receiver of Property of a Company or Foreign Company, who does not manage, and does not have the power to manage, the Affairs of the Company or the Foreign Company; or
- (b) a Receiver and Manager;

“Relevant Interest” has the meaning given by section 253;

“Repealed Acts” means the following laws—

- (a) Companies Act (Cap. 247);
- (b) Capital Markets Decree 2009;
- (c) Unit Trusts Act (Cap. 228); and
- (d) Registration of Business Names Act (Cap. 249);

“Reserve Bank of Fiji” or “Reserve Bank” means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act (Cap. 210);

“Scheme Deed” in relation to any Managed Investment Scheme, means the deed that sets out the rights, obligations and schemes governing the Managed Investment Scheme, and includes every instrument that varies those rights, obligations and schemes, or affects the powers, duties or function of the Trustee or Manager of the Managed Investment Scheme;

“Securities” means Shares, Debentures or an Interest in a Managed Investment Scheme, whether Listed or not;

“Securities Exchange” means a market, exchange or other place at which Securities are offered for sale, purchase or exchange, including any clearing, settlement or transfer services, including, but not limited to, an over-the-counter market or exchange;

“Securities Industry Licence” means a licence granted under section 273;

“Selective Buy-Back” means a Buy-Back other than an Equal Buy-Back;

“Share” means share in the share capital of a Company;

“Share Premium Account” means an account containing a sum equal to the aggregate amount or value of the premiums on Shares issued at a premium to their Par Value, whether for cash or otherwise;

“Share Warrant” means a warrant issued by a Company Limited by Shares in accordance with its Articles of Association with respect to any fully paid-up Shares stating that the bearer of the warrant is entitled to the shares therein specified in the warrant, and may provide, by coupons or otherwise, for the payment of the future dividends on the Shares included in the warrant;

“Small Private Company” means a Private Company which is a Small Private Company in accordance with section 19;

“Solvent” in relation to a person, means if, and only if, the person is able to pay all the person’s debts, as and when they become due and payable, and “Solvency” has the related meaning;

“Solvency Resolution” means a resolution by the Directors of a Company as to whether or not, in their opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable;

“Special Resolution” means—

- (a) in relation to a Company, a resolution—
  - (i) of which notice as set out in section 341(1)(c) has been given; and
  - (ii) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution; or
- (b) in relation to a Managed Investment Scheme, a resolution—
  - (i) of which notice as set out in section 145(1)(c) has been given; and
  - (ii) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;

“Standard Form Articles of Association” means the standard form articles of association contained in Schedule 2;

“Subsidiary” means a subsidiary as defined by section 7;

“Substantial Interest” is the holding a person has in a Listed Company or Managed Investment Scheme, if—

- (a) the total votes attached to voting Shares in the Company, or voting Interests in the Managed Investment Scheme, in which they or their Related Bodies Corporate, have Relevant Interests is 5% or more of the total number of votes attached to voting Shares in the Company, or Interests in the Managed Investment Scheme; or
- (b) the person has issued an offer under a Bidder’s Statement for voting Shares in the Company, or voting Interests in the Managed Investment Scheme, and the bid period has started and not yet ended;

“Takeover” has the meaning given by section 252;

“Target Company” has the meaning given by section 252;

“Target Scheme” has the meaning given by section 252;

“Target’s Statement” means a target’s statement required under Part 22;

“Time Sharing Scheme” means a scheme, undertaking or enterprise, established under this Act whereby—

- (a) participants in which are, or may become, entitled to use, occupy or possess, for 2 or more periods during the period for which the scheme, undertaking or enterprise is to operate, Property to which the scheme, undertaking or enterprise relates; and
- (b) that is to operate for a period of not less than 3 years;

“Trust” means a trust within the meaning of the Trustee Act (Cap. 65);

“Trustee”, in relation to any Managed Investment Scheme, means the trustee in which, or in the nominated Public Company of which, is vested the money, investments, and other Property that are for the time being subject to the Managed Investment Scheme;

“Ultimate Holding Company”, in relation to a Company, means a Company that—

- (a) is a Holding Company of the first-mentioned Company; and
- (b) is not a Subsidiary of a Company; and

“Unlimited Liability Company” means a Company which does not have a limit on the liability of its Members.

(2) Any provision of this Act overriding or interpreting a Company’s articles must, except as provided by this Act, apply in relation to articles in force immediately before 1 January 1984, as well as to articles coming into force after 1 January 1984, and must apply also in relation to a Company’s memorandum as it applies in relation to its articles.

(3) Any reference to legislation or a provision of legislation in this Act shall be a reference to the legislation or provision of the legislation specified as amended or replaced from time to time.

*Objective of this Act*

4. The objective of this Act is to provide for the regulation of companies Carrying on Business in Fiji.

*Reference to acts*

5. A reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done.

*Related Bodies Corporate*

6. Where a Company is a—

- (a) Holding Company of another Company;
- (b) Subsidiary of another Company; or
- (c) Subsidiary of a Holding Company of another Company,

the first-mentioned Company and the other Company are related to each other.

*Subsidiary Bodies*

7. A Company (in this section called the “first body”) is a Subsidiary of another Company only if—

- (a) the other body—
  - (i) controls or is in a position to control the composition of the first body’s board;

- (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a General Meeting of the first body; or
  - (iii) holds more than one-half of the issued share capital of the first body, excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the first body is a Subsidiary of a Subsidiary of the other body.

*Matters to be disregarded*

**8.—**(1) This section applies for the purposes of determining whether a Company is a Subsidiary of another Company.

(2) Any Shares held, or power exercisable, by the other body as a nominee or in a fiduciary capacity are treated as not held or exercisable by it.

(3) Any Shares held, or power exercisable, by or on behalf of the other body or a Subsidiary of it are to be treated as not held or exercisable by the other body if—

- (a) the ordinary business of the other body or that Subsidiary, as the case may be, includes lending money; and
- (b) the Shares are held, or the power is exercisable, only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money.

*Control*

**9.** For the purposes of this Act, an entity controls a second entity, if the first entity—

- (a) controls or is in a position to control the composition of the second entity's board;
- (b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a General Meeting of the second entity; or
- (c) holds or Controls any entity which holds, more than one-half of the issued share capital of the second entity, excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital.

*Classes of Shares or Interests in Managed Investment Schemes*

**10.—**(1) The Shares in a Company, if not divided into 2 or more classes, constitute a class.

(2) If the Interests in a Managed Investment Scheme to which an undertaking relates are not divided into 2 or more classes, they constitute a class.

*Application of Act to Government Entities*

**11.** Division 3 of Part 10 shall apply to Government Entities as if they were Public Companies incorporated under this Act.

## PART 2—ESTABLISHMENT OF REGULATORS

*Establishment*

**12.—(1)** The office of the Registrar established under the Companies Act (Cap. 247) continues in force under this Act.

(2) The Minister must appoint from time to time a Registrar, and in his or her discretion, a deputy registrar and such assistant registrars as the Minister considers necessary for the registration of Companies under this Act.

*Responsibilities*

**13.—(1)** The Reserve Bank must be responsible for the administration of the following Parts of this Act—

- (a) Part 22;
- (b) Part 23;
- (c) Part 24;
- (d) Part 25
- (e) Part 26;
- (f) Part 27;
- (g) Part 28;
- (h) Part 42; and
- (i) Part 43 and Part 44 in conjunction with the Registrar in accordance with section 630(5),

and has the following general powers and functions—

- (i) to encourage and promote the development of the Securities markets in Fiji including research and training in connection thereto;
- (ii) to enter into memoranda of understanding or other agreements with international and national agencies;
- (iii) to promote and encourage the establishment of shareholder associations to safeguard shareholder interests;
- (iv) to regulate the treatment of unclaimed dividends by the holders of Securities Industry Licences and Companies Listed on a Securities Exchange; and
- (v) upon an application being made in writing and Lodged with the Reserve Bank, to make orders in writing relieving a Director, Company or Manager of a Managed Investment Scheme from all or



specified requirements of the Parts of the Act for which the Reserve Bank is responsible on such conditions as the Reserve Bank may impose and for such a period as the Reserve Bank may specify.

(2) The Registrar must be responsible for the administration of the remainder of this Act, and Part 43 and Part 44 in conjunction with the Reserve Bank in accordance with section 630(5).

## PART 3—REGISTERING A COMPANY

### *Division 1—Types of Companies*

#### *Membership*

**14.** A Company must have at least one Member.

#### *Types of companies*

**15.** The following types of companies can be registered under this Act—

- (a) Private Companies; and
- (b) Public Companies, which include—
  - (i) Companies Limited by Shares that do not meet the requirement for registration as a Private Company under section 16;
  - (ii) Companies Limited by Shares that are included in the official list of a Securities Exchange;
  - (iii) Companies Limited by Shares and Guarantee;
  - (iv) Companies Limited by Guarantee; and
  - (v) Unlimited Liability Companies.

#### *Private Companies*

**16.** A Private Company is a Company that is registered as, or converts to, a Private Company under this Act and by its Articles of Association—

- (a) restricts the right to transfer its Shares;
- (b) limits the number of its Members to 50, not including persons who are in the employment of the Company and persons who, having been formerly in the employment of the Company, were, while in that employment and have continued, after the determination of that employment, to be, Members of the Company; and
- (c) prohibits any Offer to the Public unless it is an offer of Shares in the Company to—
  - (i) existing Members of the Company; or
  - (ii) employees of the Company or of a Subsidiary of the Company.

*Consequences of default in complying with conditions for registration as a Private Company*

**17.—**(1) Where the Articles of Association of a Company include the provisions required under section 16, but default is made in complying with any of those provisions, the Company shall cease to be entitled to any privilege or exemption conferred on Private Companies under any of the provisions of this Act, and thereupon the provisions of this Act shall apply to the Company as if it were not a Private Company.

(2) On the application by the Company or any other person interested, the Court may order that the Company be relieved from the application of subsection (1) on such terms and conditions considered just and expedient by the Court, on being satisfied that the failure to comply with the provisions of the Articles of Association required under section 16 was accidental or due to inadvertence or to some other sufficient cause, or that, on other grounds, it is just and equitable to grant relief.

*Statement to be delivered to Registrar by Company on ceasing to be Private Company*

**18.** If a Company, being a Private Company, alters its Articles of Association in such a manner that they no longer include the provisions of the Articles of Association required under section 16, the Company shall, on and from the date of the alteration, cease to be a Private Company and must deliver to the Registrar a statement in the Prescribed Form within 14 days of ceasing to be a Private Company.

*Small, medium and large Private Companies*

**19.—**(1) A Private Company is a Small Private Company for a Financial Year if the consolidated revenue for the Financial Year of the Company and the entities it controls, if any, is less than \$5 million or a Prescribed Amount.

(2) A Private Company is a Medium Private Company for a Financial Year if the consolidated revenue for the Financial Year of the Company and the entities it controls, if any, is more than \$5 million or a Prescribed Amount but less than \$20 million or a Prescribed Amount.

(3) A Private Company is a Large Private Company for a Financial Year if the consolidated revenue for the Financial Year of the Company and the entities it controls, if any, is more than \$20 million or a Prescribed Amount.

(4) Consolidated revenue is to be calculated for the purposes of this section in accordance with Accounting Standards in force at the relevant time, even if the standards do not otherwise apply to the Financial Year of some or all of the Companies concerned.

*Division 2—How to Register a Company**Application for registration*

**20.—**(1) To register a Company, a person must Lodge an application with the Registrar in the Prescribed Form.

(2) A copy of the Company's proposed Articles of Association must be Lodged with the application unless the Company adopts the Standard Form Articles of Association in accordance with section 46(4)(a) without amendment, or in the case of a Company

Limited by Guarantee, Company Limited by Shares and Guarantee or an Unlimited Liability Company with only those amendments prescribed in Schedule 2.

(3) Where a Company adopts a modified form of the Standard Form Articles of Association, it shall be sufficient compliance with this section if the proposed Articles of Association identify clearly all modifications to the Standard Form Articles of Association.

(4) An applicant must have the consents and agreements referred to in the Prescribed Form application under subsection (1) when the application is Lodged.

(5) After the Company is registered, the applicant must give the consents and agreements to the Company which the Company must keep.

*Certificate of registration*

**21.** Upon registration of the Company, the Registrar must issue the Company with a certificate of registration in the Prescribed Form certifying—

- (a) that the Company is incorporated;
- (b) whether the Company is a Private Company or a Public Company, and in the case of a Public Company, the type of Public Company; and
- (c) the liability of the Members of the Company.

*Conclusiveness of certificate of registration*

**22.** A certificate of registration given by the Registrar in respect of any Company shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters of precedent and incidental thereto have been complied with, that the Company is authorised to be registered and duly registered under this Act and that Company has the Company Name specified in the certificate of registration.

*Company comes into existence on registration*

**23.—**(1) A Company comes into existence as a body corporate at the beginning of the day on which it is registered and is taken to be registered in Fiji.

(2) A person becomes a Member, Director or secretary of a Company on registration if the person is specified in the Prescribed Form application referred to in section 20(1) when the application is Lodged and has provided the person's consent to the Company.

(3) The Shares to be taken up by the Members specified in the Prescribed Form application referred to in section 20(1) when Lodged are taken to be issued to the Members on registration of the Company.

*Prescribed Registration Fee*

**24.** The Company or Manager of a Managed Investment Scheme must pay a fee for the Prescribed Amount if an amount is prescribed to the Registrar each year within 28 days after the anniversary of the day on which it is registered.

*Division 3—Company Names**When a name is available*

**25.** A name is available to a Company, subject to any contrary written direction by the Minister, unless the name is—

- (a) identical to a name that is reserved as a Company Name or a Business Name or registered under this Act or a Repealed Act for another body;
- (b) unacceptable for registration under this Act or regulations made under this Act; or
- (c) in the opinion of the Registrar, undesirable, having applied the Company name availability rules set out in Schedule 1.

*A Company's name*

**26.—(1)** A Company's name must—

- (a) in the case of a limited Public Company, include the word “Limited” or the abbreviation “Ltd” at the end of its name;
- (b) in the case of a limited Private Company, include the words “Pte Limited” or the abbreviation “Pte Ltd” at the end of its name; and
- (c) in the case of an Unlimited Liability Company, include the words “An Unlimited Liability Company” at the end of its name.

(2) For the avoidance of doubt, for all purposes including the Lodging of Prescribed Forms—

- (a) in the case of a limited Public Company, the word “Limited” and the abbreviation “Ltd” are interchangeable; and
- (b) in the case of a limited Private Company, the words “Pte Limited” and the abbreviation “Pte Ltd” are interchangeable.

*Reserving a Company name*

**27.—(1)** The Registrar may, on written application, reserve a name pending registration of a Company or a change of name by a Company.

(2) Any such reservation must remain in force for a period of 30 days or such longer period as the Registrar may permit and, during such period, no other Company must be entitled to be registered with that name.

*Changing Company name*

**28.—(1)** If a Company wants to change its name, it must—

- (a) pass a Special Resolution adopting a new name; and
- (b) Lodge an application in the Prescribed Form with the Registrar.

(2) The Company must Lodge a copy of the Special Resolution with the Registrar within 14 days after it is passed.

(3) If the proposed name is available, the Registrar must change the Company's name by altering the details of the Company's registration to reflect the change.

(4) The change of name takes effect when the Registrar alters the details of the Company's registration.

*The Registrar's power to direct a Company to change its name*

**29.**—(1) The Registrar may direct a Company in writing to change its name within 2 months if—

- (a) the name should not have been registered; or (b) the Company ceases to be permitted to use or assume the name.

(2) The Company must comply with the direction within 2 months after being given such direction by doing everything necessary to change its name under section 28.

(3) If the Company does not comply with subsection (2), the Registrar may change the Company's name to any name determined by the Registrar in his or her discretion and any other words that section 26 requires, by altering the details of the Company's registration to reflect the change.

(4) A change of name under subsection (3) takes effect when the Registrar alters the details of the Company's registration.

*Using a name*

**30.** A Company must set out its name on all its Public Documents and negotiable instruments published or signed in Fiji.

*Power to dispense with "Limited" in name of charitable and other Companies*

**31.**—(1) If the Minister is satisfied that the Articles of Association of a Company Limited by Guarantee which is, or will be, registered after the commencement date (New Company Limited by Guarantee)—

- (a) requires it to be formed, or it has been formed, for promoting commerce, art, science, religion, charity or any other purpose considered to be appropriate by the Minister;
- (b) prohibits the application of its profits, if any; and
- (c) prohibits the payment of any dividend to its Members,

the Minister may, by licence, direct that—

- (i) the New Company Limited by Guarantee may be registered as a Company Limited by Guarantee, without including the word "Limited" or the abbreviation "Ltd" at the end of its name; and
- (ii) the New Company Limited by Guarantee may be registered accordingly and upon registration, enjoy all the privileges and, subject to the provisions of this section, be subject to all the obligations of a Company Limited by Guarantee.

(2) A licence issued by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the New Company Limited by Guarantee to which the licence is granted.

(3) The Minister may, upon the recommendation of the Registrar, revoke a licence under this section or the equivalent provision of a Repealed Act and, upon revocation, the Registrar must enter in the register the word “Limited” at the end of the name of the Company Limited by Guarantee to which it was granted, and the Company Limited by Guarantee will cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section, provided that before the recommendation is made to the Minister, the Registrar gives to the Company Limited by Guarantee notice in writing of the Registrar’s intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(4) Where a Company Limited by Guarantee in respect of which a licence under this section or the equivalent provision of a Repealed Act is in force, alters the provisions of its Articles of Association so that it no longer contains the restrictions required under subsection (1), the Registrar may, unless the Registrar sees fit to recommend the revocation of the licence, recommend to the Minister the variation of the licence by making it subject to such conditions and regulations as the Minister may think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(5) A Company Limited by Guarantee must notify the Registrar as soon as practicable if it—

- (a) breaches a condition of the licence;
- (b) pursues purposes that would have prevented it from being granted the licence;
- (c) applies profits, if any, or other income in promoting those purposes;
- (d) pays a dividend to its Members; or
- (e) alters the provisions of its Articles of Association so that it no longer contains the restrictions required under subsection (1).

#### *Division 4—Business Names*

##### *Firms and persons to be registered*

### **32. Subject to the provisions of this Act—**

- (a) every Firm having a place of business in Fiji and Carrying on Business in Fiji under a Business Name which does not consist of the true family names of all partners who are Individuals and the Company names of all partners who are Companies or Foreign Companies without any addition other than the true first names of Individual partners or initials of such First names;

- (b) every Individual having a place of business in Fiji and Carrying on Business in Fiji under a Business Name in Fiji which does not consist of his or her true family name without any addition other than the person's true First names or the initials of the person's true First names; and
- (c) every Company and Foreign Company Carrying on Business in Fiji under a Business Name which does not consist of its full Company name as registered under this Act without any addition,

must have a Business Name registered under this Act.

*When a name is available*

**33.** A name is available to be a Business Name, subject to any contrary written direction by the Minister, unless the name is—

- (a) identical to a Business Name registered under this Act or a Repealed Act for another body;
- (b) unacceptable for registration under this Act or regulations made under this Act; or
- (c) in the opinion of the Registrar, undesirable, having applied the Company name availability rules set out in Schedule 1.

*Application for registration*

**34.—**(1) To register a Business Name, a person must Lodge an application with the Registrar in the Prescribed Form.

(2) Where a business is carried on under 2 or more Business Names, each of those Business Names must be registered.

(3) The application must—

- (a) in the case of an application by an Individual, be signed by the Individual;
- (b) in the case of an application by a Firm, either by all the Individuals who are partners and in accordance with section 53 by all Companies and Foreign Companies which are partners; or
- (c) in accordance with section 53 in the case of an application by a Company or Foreign Company.

*Registrar's power to ask applicant for further information*

**35.—**(1) The Registrar may, by written notice given to an applicant for registration of a Business Name, ask the applicant to provide, within a stated reasonable time, another document or further information the Registrar reasonably believes is necessary—

- (a) to enable the Registrar to decide whether to register, or refuse to register, the Business Name; or
- (b) to satisfy the Registrar that the applicant is Carrying on, or will Carry on, the Business in Fiji.

(2) If the applicant fails to comply with the request within the stated time, the applicant is taken to have withdrawn the application.

*Time for registration*

**36.** Every Firm or person required to register a Business Name under this Part must apply to register a Business Name within 28 days after the Firm or person —

- (a) commences business; or
- (b) begins trading under a name which would require registration under this Part.

*Certificate of registration*

**37.** Upon registration of the Business Name, the Registrar must issue the Firm or person to whom the Business Name is registered with a certificate of registration in the Prescribed Form certifying that the Business Name is registered.

*Certificate of registration to be displayed*

**38.** The Firm or person to whom a Business Name is registered must cause the current certificate of registration for the Business Name to be displayed prominently at the Firm or person's principal place of business.

*Registration of changes*

**39.—(1)** Whenever a change is made or occurs in respect of the details of the Firm or person to whom a Business Name is registered as specified in its application for registration, other than the Business Name itself, the Firm or person must notify the Registrar of the changes in the Prescribed Form within 28 days of the change occurring.

(2) A Firm or person to whom a Business Name is registered may make an Extension Application to the Registrar in the Prescribed Form to extend the period in which the Firm or person must notify the Registrar of changes in accordance with subsection (1) stating the reasons for failure to notify within 28 days of the change occurring.

(3) The Registrar may accept or reject an Extension Application.

(4) If any Firm or person is required under this Part to notify the Registrar of changes in detail and fails to do so within 28 days of the change occurring or such longer period as the Registrar may permit by accepting an Extension Application, the Firm or person will be liable to pay a penalty not exceeding the maximum penalty prescribed for this section.

(5) If a Firm or person to whom a Business Name is registered wishes to change their Business Name, the Firm or person must apply for a new Business Name in accordance with section 34 and specify in that application whether the Firm or person wishes to cancel an existing Business Name registration.

*Persons in default bringing action must be ordered by the Court to register*

**40.—(1)** If any Firm or person is required under this Part to notify the Registrar of changes in details in accordance with section 39(1), and fails to do so within 28 days of the change occurring or such longer period as the Registrar may permit by accepting



an Extension Application, and during such default, commences any suit or action in any Court in the Business Name or for a cause of action arising out of any dealing by such Firm or person in the Business Name, the Court must order the Firm or person in default to notify the Registrar of the change in details in the Prescribed Form and may stay all proceedings in the suit or action until the order has been complied with or allow proceedings to be continued on an undertaking to comply with such order within a time to be limited by the Court.

(2) The power by this section given to the Court may be exercised by the High Court or by a Magistrate's Court.

*Proceedings against non-registered Firms*

**41.** If any Firm or person required to register a Business Name under this Part fails to register accordingly, all proceedings in any Court of competent jurisdiction may be taken and prosecuted against such Firm or person in the name under which such Firm or person is Carrying on Business and such name must, for the purposes of such proceedings, be a sufficient designation of such Firm or person in all writs, summonses and other legal documents and instruments.

*Register to be kept*

**42.** The Registrar must keep a register of all Business Names registered under this Act and the Firms and persons to whom the Business Names are registered.

*Removal of names from register if cease to Carry on Business*

**43.—**(1) If any Firm or person to whom a Business Name is registered ceases to Carry on Business using the Business Name, each of the following must notify the Registrar using the Prescribed Form within 28 days of ceasing to use the Business Name—

- (a) the Firm or person;
- (b) if the person is a partnership, the partners; or
- (c) if the person is a Company or Foreign Company, the Directors of the Company or persons in equivalent positions in a Foreign Company.

(2) On receipt of the Prescribed Form, the Registrar may remove the Business Name from the register of Business Names.

(3) Where the Registrar has reasonable cause to believe that any Firm or person to whom a Business Name is registered is not Carrying on Business under that Business Name, the Registrar may issue a notice to the Firm or person at their Registered Office or principal place of business that the Registrar intends to remove the Business Name from the register of Business Names if a response which is satisfactory to the Registrar is not received within 3 months of the date of the notice.

(4) If the Registrar—

- (a) considers that the Business Name should not have been registered;
- (b) does not receive a response which is satisfactory to the Registrar within 3 months of the date of the notice issued under subsection (3); or

- (c) receives a response to the notice issued under subsection (3) from a Firm or person to whom a Business Name is registered to the effect that the Firm or person has ceased to Carry on Business under the Business Name,

the Registrar may remove the Business Name from the register of Business Names.

## PART 4—BASIC FEATURES OF A COMPANY

### *Division 1—Capacity*

#### *Legal capacity and powers of a Company*

**44.—**(1) Subject to subsection (2) and to any restriction in its Articles of Association, a Company has the legal capacity and powers of an individual both in and outside Fiji.

(2) A Company also has all the powers of a Company, including the power to—

- (a) issue, buy back or cancel Shares in the Company;
- (b) issue or cancel Debentures, despite any rule of law or equity to the contrary, this power includes a power to issue Debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long;
- (c) grant or cancel options over unissued Shares in the Company;
- (d) give security by charging uncalled capital;
- (e) grant a Charge over the Company's Property;
- (f) arrange for the Company to be registered or recognised as a Company in any place outside Fiji;
- (g) distribute any of the Company's Property among the Members, in kind or otherwise, including on a winding up; and
- (h) do anything that it is authorised to do by any other law, including a law of a foreign country.

(3) A Company Limited by Guarantee does not have the powers referred to in subsection (2)(a), (c) and (d).

(4) For the avoidance of doubt, this section does not authorise a Company to do an act that is prohibited by this Act or by another law of Fiji or give a Company a right that another law of Fiji denies to the Company.

(5) A Company's legal capacity to do something is not affected by the fact that the Company's interests are not, or would not be, served by doing it.

#### *Ultra vires transactions*

**45.—**(1) No act of a Company, including the entering into an agreement by the Company, and no conveyance or transfer of Property to or by a Company, shall be invalid by reason only of the fact that the Company was without capacity or power to do the act or to execute, or take the conveyance or transfer.

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

- (a) proceedings against the Company by a Member of the Company or, where the Company has issued Debentures secured by a floating Charge over all or any of the Property of the Company, by the holder of any of those Debentures or the trustees 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) proceedings by the Company, or by a Member of the Company, against the present or former Officers of the Company.

### *Division 2—Articles of Association*

#### *Memorandum and Articles of Association*

**46.**—(1) A Company which is incorporated under this Act, must not have a Memorandum of Association.

(2) A Company must adopt Articles of Association under which the internal management of a Company is governed.

(3) A Company may, on registration, or by Special Resolution at any time following registration, adopt the Standard Form Articles of Association.

(4) A Company adopts its Articles of Association—

- (a) on registration – if each person specified in the application for the Company’s registration as a person who consents to become a Member agrees in writing to the terms of—
  - (i) the Standard Form Articles of Association by stating that intention in the application for the Company’s registration; or
  - (ii) a different Articles of Association; or
- (b) after registration – if the Company passes a Special Resolution adopting—
  - (i) the Standard Form Articles of Association; or
  - (ii) a different Articles of Association.

(5) For the avoidance of doubt, the different Articles of Association referred to in subsection (4)(a)(ii) and (b)(ii) may take the form of clearly identified modifications to the Standard Form Articles of Association.

(6) In the case of a Company Limited by Guarantee, Company Limited by Shares and Guarantee or Unlimited Liability Company, the Company should adopt the entire Standard Form Articles of Association with only those amendments prescribed in Schedule 2 for a Company Limited by Guarantee, Company Limited by Shares and Guarantee or Unlimited Liability Company.

(7) The Company may modify or repeal its Articles of Association, or a provision of its Articles of Association, by Special Resolution.

(8) The Company's Articles of Association may provide that the Special Resolution does not have any effect unless a further requirement specified in the Articles of Association relating to that modification or repeal has been complied with.

(9) Unless the Articles of Association provide otherwise, the Company may modify or repeal a further requirement described in subsection (7) only if the further requirement is itself complied with.

(10) A Company must Lodge with the Registrar a copy of a Special Resolution adopting, modifying or repealing its Articles of Association with the Prescribed Form within 14 days after the Special Resolution is passed.

(11) The Company must also Lodge with the Registrar within that period—

- (a) if the Company adopts an Articles of Association that differs from the Standard Form Articles of Association, a copy of that Articles of Association; or
- (b) if the Company modifies its Articles of Association so that it no longer conforms with the Standard Form Articles of Association, a copy of that modification.

(12) In the event of an inconsistency between this Act and the Articles of Association, this Act will apply.

(13) The Registrar may direct a Company to Lodge a consolidated copy of its Articles of Association with the Registrar.

*Effect of a Company's Articles of Association*

**47.—**(1) A Company's Articles of Association have effect as a contract—

- (a) between the Company and each Member;
- (b) between the Company and each Director and Company secretary; and
- (c) between a Member and each other Member,

under which each person agrees to observe and perform the Articles of Association so far as they apply to that person.

(2) Unless a Member of a Company Limited by Shares agrees in writing to be bound, they are not bound by a modification of the Articles of Association made after the date on which they became a Member, so far as the modification—

- (a) requires the Member to take up additional Shares; or
- (b) increases the Member's liability to contribute to the share capital of, or otherwise to pay money to, the Company.

*Date of effect of adoption, modification or repeal of Articles of Association*

**48.** If new Articles of Association are adopted or existing Articles of Association are modified or repealed, that adoption, modification or repeal takes effect if it is the result of a Special Resolution—

- (a) on the date on which the resolution is passed if it specified no later date;
- (b) on a date specified in, or determined in accordance with, the resolution if the relevant date is later than the date on which the resolution is passed; or
- (c) if it is the result of a Court order made under section 177—
  - (i) on the date on which the order is made if it specifies no later date; or
  - (ii) on a date specified by the order.

*Company must send copy of its Articles of Association to Member*

**49.** A Company must send a copy of its Articles of Association to a Member of the Company within 28 days if the Member—

- (a) asks the Company, in writing, for the copy; and
- (b) pays any fee, up to the Prescribed Amount, required by the Company.

*Division 3—Registered Office and Place of Business**Registered Office*

**50.—(1)** A Company must have a Registered Office in Fiji, and communications and notices to the Company may be addressed to its Registered Office.

(2) Where a Company changes the address of its Registered Office, it must Lodge a notice of the change of address of its Registered Office with the Registrar not later than 14 days after the date on which the change occurs.

(3) The notice must be in the Prescribed Form.

(4) A notice of change of address takes effect from the later of—

- (a) the seventh day after the notice was Lodged; or
- (b) a later day specified in the notice as the date from which the change is to take effect.

(5) A Company must display its name prominently at every place at which the Company carries on business.

(6) A Company must also display its name and the words “Registered Office” prominently at its Registered Office.

(7) The Registered Office of a Public Company must be open to the public for a minimum of 3 hours each Business Day between the hours of 9am and 5pm and must display its opening hours prominently at its Registered Office.

*Place of business*

**51.—**(1) On incorporation, a Company's principal place of business is the principal place of business specified in the application for registration.

(2) Where a Company changes the address of its principal place of business, it must Lodge with the Registrar a notice of a change of the address of its principal place of business not later than 14 days after the date on which the change occurs.

(3) The notice under subsection (2) must be in the Prescribed Form.

**PART 5—EXECUTION OF DOCUMENTS***No requirement to have a common seal*

**52.** A Company is not required to have a common seal.

*Execution of documents (including deeds) by the Company itself*

**53.—**(1) A Company may execute a document if the document is signed by—

- (a) 2 Directors of the Company;
- (b) a Director and a secretary of the Company; or
- (c) for a Private Company that has a sole Director who is also the sole secretary of the Company, that Director.

(2) A Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this section.

(3) This section does not limit the ways in which a Company may execute a document, including a deed.

*Entitlement to make assumptions*

**54.—**(1) A person is entitled to make the following assumptions in relation to dealings with a Company—

- (a) a person may assume that the Company's Articles of Association and any provisions of this Act that apply to the Company, have been complied with;
- (b) a person may assume that any person who appears, from information provided by the Company that is available to the public from the Registrar, to be a Director or a company secretary of the Company—
  - (i) has been duly appointed; and
  - (ii) has authority to exercise the powers and perform the duties customarily exercised or performed by a Director or company secretary of a similar Company;
- (c) a person may assume that any person who is held out by the Company to be an Officer or agent of the Company—
  - (i) has been duly appointed; and

- (ii) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of Officer or agent of a similar Company;
- (d) a person may assume that the Officers and agents of the Company properly perform their duties to the Company;
- (e) a person may assume that a document has been duly executed by the Company if the document has been signed in accordance with section 53;
- (f) for the purposes of making the assumption, a person may also assume that any person who states next to their signature that they are the sole Director and sole Company secretary of the Company occupies both offices; and
- (g) a person may assume that an Officer or agent of the Company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

(2) The Company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions is incorrect.

(3) A person is entitled to make the assumptions in subsection (1) in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to Property from a Company.

(4) The Company and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions is incorrect.

(5) The assumptions may be made even if an Officer or agent of the Company acts fraudulently, or forges a document, in connection with the dealings.

(6) A person is not entitled to make an assumption in subsection (1) if at the time of the dealings they knew or suspected that the assumption was incorrect.

(7) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

(8) Except, for a change registered under this Act, a person is not taken to have information about a Company merely because the information is available to the public from the Registrar.

*Agent exercising a Company's power to make contracts*

**55.**—(1) A Company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Company's express or implied authority and on behalf of the Company, including, but not limited to, a solicitor acting for the Company.

(2) The power may be exercised without using a common seal.

(3) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

## PART 6—FOREIGN COMPANIES

*Division I—General**When a Foreign Company may Carry on Business in Fiji*

**56.—**(1) A Foreign Company must not Carry on Business in Fiji unless—

- (a) the Foreign Company has been granted a foreign investment registration certificate under the Foreign Investment Act 1999, and the certificate remains in force; and
- (b) the Foreign Company is registered under this Part.

(2) A Foreign Company shall not be deemed to have a place of business in Fiji solely on account of its doing business through an agent in Fiji at the place of business of the agent.

*Application for registration*

**57.—**(1) A foreign Company must within 28 days of establishing a place of business in Fiji, apply to the Registrar for registration under this Part using the Prescribed Form accompanied by the following in English—

- (a) a certified copy or if a certified copy cannot be obtained, a copy of the instrument and a statutory declaration confirming it is a true and correct copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation of the document;
- (b) a list of its directors or equivalent officers, containing particulars with respect to its directors that are equivalent to the particulars that are required by this Act to be contained in the register of the directors and secretaries of a Foreign Company registered under this Act;
- (c) a statement of all subsisting Charges excluding Charges in relation to Property solely situated outside Fiji;
- (d) the names and postal addresses of a Local Agent and a written statement that is in the Prescribed Form and is made by the Local Agent; and
- (e) the full address of its Registered Office or principal place of business.

(2) If any Charge, being a Charge which ought to have been included in the statement required under subsection (1)(c), is not so included, it shall be void as regards Property in Fiji against the liquidator and any creditor of the Foreign Company.

(3) The Registrar must grant the application and register the Foreign Company under this Part by entering the Foreign Company's name in a register kept for the purposes of this Part if the Foreign Company's company name can be registered under this Part.



(4) Where a Foreign Company has, before 1 January 1984, delivered to the Registrar the documents and particulars required by the corresponding provision of any of the Repealed Acts, it shall, subject to the provisions of that Repealed Act in accordance with which such documents and particulars were so delivered and of this Act, have the same power to hold land in Fiji as if it were a Foreign Company registered under this Act.

*Certificate of registration*

**58.**—(1) Upon registration of the Foreign Company, the Registrar must issue the Foreign Company with a certificate of registration in the Prescribed Form certifying that the Foreign Company has complied with the requirements of this section.

(2) From the date of registration specified in the certificate of registration, the subscribers to the memorandum, together with such other persons as may, from time to time, become Members of the Foreign Company, shall be a Foreign Company by the name specified in the certificate of registration, capable of suing and being sued and of exercising all the functions of an incorporated company, with power to hold land and having perpetual succession, but with such liability on the part of the Members to contribute to the assets of the Company in the event of it being wound up as is mentioned in this Act.

*Changes to Foreign Company*

**59.**—(1) If any change is made to—

- (a) the charter, statutes or memorandum and articles of a Foreign Company or any such instrument;
- (b) the directors of a Foreign Company;
- (c) the names or postal addresses of the Local Agent of a Foreign Company; or
- (d) the address of the Registered Office or principal place of business of a Foreign Company,

the Foreign Company must, within 56 days, notify the Registrar of the changes using the Prescribed Form accompanied by the relevant documents in English.

(2) Where, in the case of a Foreign Company—

- (a) a winding up order is made by; or
- (b) proceedings substantially similar to a voluntary winding up of the Foreign Company under this Act are commenced in,

a court of the country in which such Foreign Company was incorporated, the Foreign Company must, within 28 days of the date of the making of such order or the commencement of such proceedings, as the case may be, deliver to the Registrar a return in the Prescribed Form relating to the making of such order or the commencement of such proceedings.

*Liability of Local Agent*

**60.** A Local Agent of a registered Foreign Company is answerable for the doing of all acts, matters and things that they would be answerable for if the Foreign Company was a Company and the Local Agent was a Director or Secretary of the Company.

*Financial statements*

**61.—**(1) Subject to this section, where a registered Foreign Company is required to prepare financial statements under the law of its place of incorporation or formation, the registered Foreign Company must, at least once in every calendar year and at intervals of not more than 15 months, Lodge a copy of those financial statements, together with a statement in writing in the Prescribed Form, verifying that the copies are true copies of the documents so required.

(2) The Registrar may extend the period within which subsection (1) requires a Financial Statement or other documents to be Lodged.

(3) Irrespective of whether a registered Foreign Company is required by the law of the place of its incorporation or formation to prepare financial statements, the Foreign Company must prepare and Lodge Financial Statements if required to do so by the Registrar, within such a period, in such form and containing such particulars and including such documents as the Foreign Company would have been required to prepare if the company were a Public Company incorporated under this Act, and in addition, the Financial Statements must be audited if so required by the Registrar.

*Cessation of business etc.*

**62.—**(1) Within 7 days after ceasing to Carry on Business in Fiji, a registered Foreign Company must Lodge written notice in the Prescribed Form with the Registrar that it has so ceased.

(2) Upon receipt of a notice under subsection (1), the Registrar must strike the name of the Foreign Company from the register of Foreign Companies.

(3) Where the Registrar has reasonable cause to believe that a Foreign Company has ceased to carry on business in Fiji, the Registrar may send, by registered post, to the Local Agent and, if more than one, to all the Local Agents, a letter inquiring whether the company is maintaining a place of business in Fiji.

(4) If the Registrar receives an answer to the effect that the Foreign Company has ceased to carry on business in Fiji, the Registrar may immediately strike the name of the Foreign Company from the register of Foreign Companies or, if the Registrar does not receive an answer within 3 months, the Registrar may, after the 3 month period has concluded, strike the name of the Foreign Company from the register of Foreign Companies.

(5) Unless the Registrar receives, within 28 days after the date of the letter, an answer to the effect that the Foreign company is still Carrying on Business in Fiji, it may publish in the *Gazette*, and send to the Foreign Company, a notice that, at the end of 3 months after the date of the notice, the Foreign Company's name will, unless cause to the contrary is shown, be struck off the register of Foreign Companies kept for the purposes of this Part.

(6) At the end of the period specified in a notice sent under subsection (2), the Registrar may, unless cause to the contrary has been shown, strike the Foreign Company's name off the register of Foreign Companies kept for the purposes of this Part, and must publish in the *Gazette* a notice of the strike off.

(7) Nothing in subsection (6) affects the power of the Court to wind up a Foreign Company whose name has been struck off the register of Foreign Companies kept for the purposes of this Part.

(8) Where a Foreign Company's name is struck off the register of Foreign Companies kept for the purposes of this Part under subsection (6), the Foreign Company ceases to be registered under this Part.

(9) A person who is aggrieved by a Foreign Company's name having been struck off the register of Foreign Companies kept for the purposes of this Part, may, within 3 years after the striking off, apply to the Court for the Foreign Company's name to be restored to the register.

(10) If, on an application under subsection (9), the Court is satisfied that—

- (a) at the time of the striking off, the Foreign Company was Carrying on Business in Fiji; or
- (b) it is otherwise just for the Foreign Company's name to be restored to the register,

the Court may, by order—

- (i) direct the Foreign Company's name to be restored to the register; and
- (ii) give such directions, and make such provision, as it thinks just for placing the Foreign Company and all other persons in the same position, as nearly as practicable, as if the Foreign Company's name had never been struck off.

(11) Where a registered Foreign Company commences to be wound up, or is dissolved or deregistered, in its place of incorporation or formation—

- (a) each person who, on the day when the winding up proceedings began, was a Local Agent of the Foreign Company must, within the period of 28 days after that day or within that period as extended by the Registrar in special circumstances, Lodge or cause to be Lodged notice of that fact and, when a liquidator is appointed, notice of the appointment; and
- (b) the Court must, on application by the person who is the liquidator for the Foreign Company's place of incorporation or formation, or by the Registrar, appoint a liquidator of the Foreign Company.

(12) A liquidator of a registered Foreign Company who is appointed by the Court—

- (a) must, before any distribution of the Foreign Company's Property is made, by advertisement in a daily newspaper circulating generally in Fiji, invite all creditors to make their claims against the Foreign Company within a reasonable time before the distribution;
- (b) must not, without obtaining an order of the Court, pay out a creditor of the Foreign Company to the exclusion of another creditor of the Foreign Company; and
- (c) must, unless the Court otherwise orders, recover and realise the Property of the Foreign Company in this jurisdiction and must pay the net amount so recovered and realised to the liquidator of the Foreign Company for its place of incorporation or formation.

(13) Where a registered Foreign Company has been wound up so far as its Property in Fiji is concerned and there is no liquidator for its place of incorporation or formation, the liquidator may apply to the Court for directions about the disposal of the net amount recovered under subsection (12).

(14) Where a Foreign Company has been wound up, dissolved or deregistered in its place of incorporation or formation, the Registrar must strike the name of the Foreign Company from the register of Foreign Companies.

(15) Where the Registrar strikes the name of a Foreign Company from the register of Foreign Companies, the obligations of the Foreign Company under this Part shall cease immediately, but the Foreign Company will not be released from complying with section 56 or the performance of any obligation which was due to have been performed prior to the date of striking off, even if the period for lodging a document has not ended by the date of striking off.

*Register of members of Foreign Company*

**63.—**(1) A registered Foreign Company that has a share capital may cause a branch register of members to be kept in Fiji.

(2) If a member of a registered Foreign Company is resident in Fiji and requests the Foreign Company in writing to register in a branch register kept under subsection (1) shares held by the member, then the Foreign Company must register in that register the shares held by the member.

(3) The Foreign Company must keep the register in the same manner as this Act requires a Company to keep its register of Members.

(4) The Court has the same powers in relation to correction of the register as it has in relation to correction of a Company's register of Members.

(5) The register is *prima facie* evidence of matters that this Act requires or authorises to be entered in the register.

*Notifying the Registrar about register kept under section 63*

**64.** Within 14 days after—

- (a) beginning to keep a register under section 63;
- (b) changing the place where a register is so kept; or
- (c) discontinuing a register under section 63,

a registered Foreign Company must Lodge a written notice of that fact specifying, if paragraph (a) or (b) applies, the address or new address, as the case may be, where the register is kept.

*Certificate as to shareholding*

**65.** A certificate under the seal of a Foreign Company specifying Shares held by a Member of that Company and registered in a register kept under section 63 is *prima facie* evidence of the title of the Member to the Shares and of the fact that the shares are registered in the register.

*Registered office*

**66.** A Foreign Company must have a Registered Office in Fiji in the same manner as section 50 requires a Company to keep a Registered Office and communications and notices to the Company may be addressed to its Registered Office.

*Charges*

**67.** The provisions of Part 31 must apply to Charges on Property in Fiji which are created and Charges on Property which is acquired on or after 1 January 1984 by a Foreign Company.

*Service on a Foreign Company*

**68.** Any process or notice required to be served on a Foreign Company shall be considered to be properly served if addressed to the Local Agent of the Foreign Company, provided that—

- (a) where any such Foreign Company makes default in delivering to the Registrar the name and address of the Local Agent; or
- (b) if, at any time, all the Local Agents are dead or have ceased so to reside, or refuse to accept service on behalf of the Foreign Company, or for any reason cannot be served,

any process or notice may be served on the Company by leaving it at or sending it by registered post to the Registered Office or any place of business established by the Foreign Company in Fiji.

*Bidder's Statement, Target's Statement, Prospectuses and Offer Documents*

**69.—**(1) Part 26 applies to Foreign Companies as if all references to—

- (a) a Public Company were references to a Foreign Company; and
- (b) all references to Directors of a Company were references to directors or equivalent officers of the Foreign Company.

(2) Part 22 applies to Foreign Companies as if all references to—

- (a) a Company were references to a Foreign Company; and
- (b) all references to Directors of a Company were references to directors or equivalent officers of the Foreign Company.

*Division 2—Names of Foreign Companies*

*When a name is available*

**70.** A name is available to a Foreign Company if it is available under section 25.

*Foreign Company names*

**71.** Sections 26(2), 28 and 29 apply to Foreign Companies as if all references to a Company were references to a Foreign Company.

*Using a name*

**72.** A registered Foreign Company must set out the following on all its Public Documents and negotiable instruments published or signed in Fiji—

- (a) its name;
- (b) its place of incorporation or formation; and
- (c) if the liability of its members is limited and this is not apparent from its name, notice of the limited liability of its members.

**PART 7—PRE-INCORPORATION CONTRACTS**

*Contracts before registration*

**73.—(1)** A person may enter into a written agreement in the name of, or purport to act in the name of, or on behalf of, an entity that is contemplated to be registered as a Company under this Act, but does not yet exist at the time.

(2) A person who does anything contemplated in subsection (1) is jointly and severally liable with any other such person for liabilities created as provided for in the contract while so acting, if—

- (a) the contemplated entity is not subsequently registered; or
- (b) after being registered, the Company rejects any part of such an agreement or action.

(3) If, after its registration, a Company enters into an agreement on the same terms as, or in substitution for, an agreement contemplated in subsection (1), the liability of a person under subsection (2) in respect of the substituted agreement is discharged.

(4) Within 3 months after the date on which a Company was registered the board of that Company may completely, partially or conditionally ratify or reject any contract or other action purported to have been made or done in its name or on its behalf, as contemplated in subsection (1).

(5) If, within 3 months after the date on which a Company was registered, the board of that Company has neither ratified nor rejected a particular contract, or other action purported to have been made or done in the name of the Company, or on its behalf, as contemplated in subsection (1), the Company will be regarded to have ratified that agreement or action.

(6) To the extent that a contract or action has been ratified or regarded to have been ratified in terms of subsection (5)—

- (a) the agreement is as enforceable against the Company as if the Company had been a party to the agreement when it was made; and
- (b) the liability of a person under subsection (2) in respect of the ratified agreement or action is discharged.

(7) If a Company rejects an agreement or action contemplated in subsection (1), a person who bears any liability in terms of subsection (2) for that rejected agreement or action may assert a claim against the Company for any benefit it has received, or is entitled to receive, in terms of the agreement or action.

*This Part replaces other rights and liabilities*

**74.** This Part replaces any right or liability anyone would otherwise have on the pre-registration contract.

*Expenses incurred in promoting and setting up Company*

**75.** The expenses incurred before registration in promoting and setting up a Company may be paid out of the Company's assets.

**PART 8—CHANGE OF COMPANY TYPE**

*Change of Company type*

**76.—(1)** A Company may change from—

- (a) a Private Company limited by Shares, Company Limited by Guarantee, Company Limited by Shares and Guarantee or an Unlimited Liability Company to a Public Company limited by Shares;
- (b) a Public Company limited by Shares, Company Limited by Guarantee, Company Limited by Shares and Guarantee or an Unlimited Liability Company to a Private Company limited by Shares;
- (c) a Company Limited by Shares and Guarantee to a Company Limited by Guarantee;
- (d) a Company Limited by Shares to an Unlimited Liability Company, by—
  - (i) passing a Special Resolution resolving to change its type; and
  - (ii) complying with sections 77 and 78.

(2) A Public Company seeking to change to a Private Company must comply with the requirements for Private Companies set out in section 16.

(3) The Company must Lodge a copy of the Special Resolution with the Registrar within 14 days with the Prescribed Form after the Special Resolution is passed.

*Applying for change of type*

**77.—**(1) To change its type, a Company must Lodge an application with the Registrar in the Prescribed Form.

(2) The Shares may be issued to existing Members only, to new Members only or to existing and new Members.

(3) For a Company changing to a Private Company, if any of the particulars in the register kept by the Company under section 82 have changed since they were last notified to the Registrar, the application must set out the changes in particulars in addition to the other information required by this section.

(4) The Company must have the consents specified in the Prescribed Form referred to, if any, when the application is Lodged which the Company must keep.

*Registrar changes type of Company*

**78.—**(1) The Registrar must give notice that it intends to alter the details of the Company's registration if—

(a) the Registrar is satisfied that—

- (i) the application complies with section 76; and
- (ii) for an application by a Company Limited by Guarantee to change to a Company Limited by Shares, the Company's creditors are not likely to be materially prejudiced by the change; and

(b) for an application by a Company Limited by Guarantee or Unlimited Liability Company to change to a Company Limited by Shares that is accompanied by a copy of a Special Resolution dealing with an issue of Shares according to an application Lodged in the Prescribed Form under section 77, the Registrar is not of the opinion that the obligations that would attach to the Shares are unreasonable compared with the obligations that attach to membership of the Company Limited by Guarantee or Unlimited Liability Company.

(2) To make a decision under subsection (1)(a)(ii), the Registrar may direct the Company in writing to—

- (a) notify some or all of its creditors of the proposed change in the way the Registrar specifies; and
- (b) invite those creditors to make submissions to the Registrar.

(3) A change of type under this section takes effect when the Registrar alters the details of the Company's registration.



(4) Despite sections 187(3) and 188, a Special Resolution passed in connection with the change of type also takes effect when the Registrar alters the details of the Company's registration.

(5) The Registrar must give the Company a new certificate of registration after it alters the details of the Company's registration.

(6) The Company's name is the name specified in the certificate of registration issued under this section.

(7) If the Registrar alters the details of a Company's registration under this section, a Court is not to make an order reversing the alteration of the details of the Company's registration.

*The Registrar may direct a Private Company to change to a Public Company in certain circumstances*

**79.**—(1) The Registrar may direct a Private Company in writing to change to a Public Company within 2 months if it is satisfied that the Company has contravened section 16.

(2) The Company must comply with the direction within 2 months after being given it by doing everything necessary to change to a Public Company under section 78.

(3) If a Private Company does not comply with subsection (2), the Registrar may change the Company from a Private Company to a Public Company by altering the details of the Company's registration to reflect the Company's new type.

(4) A change of type under this section takes effect when the Registrar alters the details of the Company's registration.

(5) The Registrar must give the Company a new certificate of registration after it alters the details of the Company's registration under subsection (3).

(6) The Company's name is the name specified in the certificate of registration issued under this section.

*Effect of change of type*

**80.**—(1) A change of type does not—

- (a) create a new legal entity;
- (b) affect the Company's existing Property, rights or obligations, except as against the Members of the Company in their capacity as Members; or
- (c) render defective any legal proceedings by or against the Company or its Members.

(2) On the change of type of a Company from a Company Limited by Guarantee or a Company Limited by Shares and Guarantee to a Company Limited by Shares—

- (a) the liability of each Member and past Member as a guarantor on the winding up of the Company is extinguished;
- (b) the Members cease to be Members of the Company; and

- (c) if Shares are to be issued to a person as specified in the list referred to in the application Lodged in the Prescribed Form under section 77—
  - (i) the Shares are taken to be issued to that person;
  - (ii) the person is taken to have consented to be a Member of the Company; and
  - (iii) the person becomes a Member of the Company.

## PART 9—COMPANY REGISTERS

### *Registers to be maintained*

**81.—**(1) A Company or Trustee of a Managed Investment Scheme must set up and maintain—

- (a) a register of Members in accordance with section 82;
- (b) if the Company or Managed Investment Scheme grants options over unissued Shares or Interests on or after the commencement date, a register of option holders and copies of options documents in accordance with section 83;
- (c) if the Company issues Debentures, a register of Debenture Holders in accordance with section 84; and
- (d) a register of Charges in accordance with section 379.

(2) For the purposes of this Part, choses in action, including an undertaking, that fall into one of the exceptions in paragraphs (a), (b), (c) and (d) of the definition of Debenture in section 3 must also be entered into the register of Debenture Holders.

### *Register of Members*

**82.—**(1) The register of Members must contain the following information about each Member—

- (a) the Member's name and address; and
  - (b) the date on which the entry of the Member's name in the register is made.
- (2) If the Company has a Share capital, the register must also show—
- (a) the date on which every allotment of Shares takes place;
  - (b) the number of Shares in each allotment;
  - (c) the Shares held by each Member;
  - (d) the class of Shares;
  - (e) the Share numbers, if any, or Share certificate numbers, if any, of the Shares;

- (f) the amount paid on the Shares;
- (g) whether or not the Shares are fully paid; and
- (h) the amount unpaid on the Shares, if any.

(3) The register of a Company that has a Share capital and is not a Listed Company must indicate any Share that a Member does not hold beneficially.

(4) In deciding for the purposes of subsection (3) whether a Member holds Shares beneficially or non-beneficially, the Company is to have regard only to information in notices given to the Company under section 251.

(5) The register of a Managed Investment Scheme must also show —

- (a) the date on which every issue of Interests takes place;
- (b) the number of Interests in each issue;
- (c) the Interests held by each Member;
- (d) the class of Interests; and
- (e) the amount paid, or agreed to be considered as paid, on the Interests.

(6) A register of Members must also show —

- (a) the name and details of each person who stopped being a Member of the Company after the date of this Act or Managed Investment Scheme within the last 7 years; and
- (b) the date on which the person stopped being a Member.

(7) The Company or Managed Investment Scheme may keep these entries separately from the rest of the register.

(8) For the purposes of this section —

- (a) 2 or more persons who jointly hold Shares in the Company or Interests in a Managed Investment Scheme are taken to be a single Member of the Company or Managed Investment Scheme in relation to those Shares or Interests in a Managed Investment Scheme; and
- (b) 2 or more persons who have given a guarantee jointly are taken to be a single Member of the Company.

(9) Persons referred to under subsection (8) may also be Members of the Company or Managed Investment Scheme because of Shares or Interests in a Managed Investment Scheme that they hold, or a guarantee that they have given, in their own right or jointly with others.

*Register of option holders and copies of options documents*

**83.—**(1) The register of option holders must contain the following information about each holder of options over unissued Shares in the Company or unissued Interests in a Managed Investment Scheme—

- (a) the option holder's name and address;
- (b) the date on which the entry of the option holder's name in the register is made;
- (c) the date of grant of the options; and
- (d) the number and description of the Shares or interests over which the options were granted;
- (e) either—
  - (i) the period during which the options may be exercised; or
  - (ii) the time at which the options may be exercised;
- (f) any event that must happen before the options can be exercised;
- (g) any consideration for the grant of the options;
- (h) any consideration for the exercise of the options or the method by which that consideration is to be determined.

(2) Pursuant to subsection (1) and because the register is a register of the holders of options that are still exercisable, the register must be updated whenever options are exercised or expire.

(3) Information about the grant of an option must be entered in the register within 14 days after the grant of the option.

(4) The Company or Trustee of a Managed Investment Scheme must keep with the register a copy of every document that grants an option over unissued Shares or Interests in a Managed Investment Scheme.

(5) Subsection (3) does not apply if the option is listed for quotation on a Securities Exchange.

(6) The Company or Trustee of a Managed Investment Scheme must change the register to reflect the transfer of an option only if the person transferring the option gives the Company or Trustee of a Managed Investment Scheme written notice of the transfer.

(7) A failure to comply with this section in relation to an option does not affect the option itself.

*Register of Debenture Holders*

**84.—**(1) The register of Debenture Holders must contain the following information about each holder of a Debenture—

- (a) the Debenture Holder's name and address; and

(b) the amount of the Debentures held.

(2) A Company's failure to comply with this section in relation to a Debenture does not affect the Debenture itself.

*Location of registers*

**85.**—(1) A register kept under this Part that relates to a Company or Managed Investment Scheme must be kept at—

- (a) the Company or Trustee's Registered Office, as the case may be;
- (b) the Company or Trustee's principal place of business in Fiji, as the case may be;
- (c) a place in Fiji, whether of the Company or of someone else, where the work involved in maintaining the register is done; or
- (d) another place in Fiji approved by the Registrar.

(2) The Company or Trustee of a Managed Investment Scheme must Lodge with the Registrar a notice of the address at which the register is kept within 7 days after the register is—

- (a) established at an office that—
  - (i) is not the Registered Office of the Company or Trustee; and
  - (ii) is not at the principal place of business of the Company or Trustee in Fiji; or
- (b) moved from one place to another.

(3) Notice is not required for moving the register between the Registered Office and the principal place of business in Fiji.

*Right to inspect and get copies*

**86.**—(1) A Company or Trustee of a Managed Investment Scheme must allow anyone to inspect a register kept under this Part.

(2) If the register is not kept on a computer, the person inspects the register itself.

(3) If the register is kept on a computer, the person inspects a hard copy of the information on the register.

(4) The requirement in subsection (3) to allow the person to inspect a hard copy of the information on the register does not apply in relation to a register that is kept on a computer if the person and the Company or Trustee agree that the person can access the information by computer.

(5) A Member of a Company or a Managed Investment Scheme, a registered option holder or a registered Debenture Holder may inspect a register kept under this Part without Charge.

(6) Other people may inspect the register only on payment of any fee, up to the Prescribed Amount, required by the Company or scheme.

(7) The Company or Managed Investment Scheme must give a person a copy of the register, or a part of the register, within 7 days if the person —

(a) asks for the copy; and

(b) pays any fee, up to the Prescribed Amount, required by the Company or Managed Investment Scheme.

(8) The Registrar may allow a longer period to comply with the request.

(9) If the register is kept on a computer and the person asks for the data on a computer disk, the Company or Trustee of a Managed Investment Scheme must give the data to the person on computer disk.

(10) The data must be readable but the computer disk need not be formatted for the person's preferred operating system.

(11) A person has the same rights to inspect, and obtain copies of, the documents kept under subsection (5) as the person has in respect of the register of option holders itself.

(12) The Company or Trustee of a Managed Investment Scheme is not required under subsections (1), (2), (3) or (5) to allow a person to see, or to give a person a copy that contains, Share certificate numbers.

(13) The Registrar may grant a Company or Trustee of a Managed Investment Scheme an exemption from complying with subsections (1), (2), (3) or (5) in relation to information in a register of Debenture Holders about Debentures that are not convertible into Shares or options over unissued Shares on such conditions, if any, as the Registrar must determine in the Registrar's absolute discretion.

(14) On application by the Registrar, the Court may order a person who contravenes a condition of the exemption to comply with the condition.

#### *Correction of registers*

**87.—**(1) A Company or Trustee of a Managed Investment Scheme or a person aggrieved may apply to the Court to have a register kept by the Company or Managed Investment Scheme under this Part corrected.

(2) If the Court orders the Company or Trustee of a Managed Investment Scheme to correct the register, it may also order the Company or Trustee of a Managed Investment Scheme to compensate a party to the application for loss or damage suffered.

(3) If the Court orders a Company or Trustee of a Managed Investment Scheme to correct its register of Members, the Company or Trustee of a Managed Investment Scheme must Lodge a copy of the Court order with the Registrar.

*Evidentiary value of registers*

**88.** In the absence of evidence to the contrary, a register kept under this Part is proof of the matters shown in the register under this Part.

*Notice of change to Member register*

**89.** A Company must notify the Registrar in the Prescribed Form of any change in any of the particulars in the register it maintains under section 82 within the time required under this Act or if no time is specified, within 28 days of the change.

*Notice of change to Share structure*

**90.** A Private Company that is required to notify the Registrar under section 89 of any change to the particulars in any register must also notify the Registrar in the Prescribed Form, at the same time, of any of the following details in relation to the Company that are different from the details previously notified to the Registrar—

- (a) the total number of the Company's Shares on issue;
- (b) the classes into which the Shares are divided; and
- (c) for each class issued—
  - (i) the total number of Shares for the class;
  - (ii) the total amount paid up for the class; and
  - (iii) the total amount unpaid for the class.

**PART 10—DIRECTORS***Division 1—Appointment of Directors and Secretaries**Minimum number of Directors*

**91.—**(1) Every Company other than a Private Company must have at least three Directors, not counting alternate Directors, and at least two Directors must ordinarily reside in Fiji.

(2) A Private Company must have at least one Director, and at least one Director of that Company must ordinarily reside in Fiji.

*Minimum number of Company secretaries*

**92.—**(1) Every Company other than a Private Company must have at least one Company secretary, and at least one of them must ordinarily reside in Fiji.

(2) A Private Company is not required to have a Company secretary but, if it does have one or more secretaries, at least one of them must ordinarily reside in Fiji.

*Who can be a Director*

**93.—**(1) Only a natural person who is at least 18 years of age may be appointed as a Director or secretary of a Public Company.

(2) A person who is disqualified from acting as an Officer of a Company under Part 12 may only be appointed as Director or secretary of a Company if the appointment is made with permission granted by the Registrar or leave is granted by the Court.

(3) A resolution put forward in contravention of this section will be void, whether or not there was an objection at the time the resolution was put forward provided that this subsection shall not be taken as excluding the operation of section 97.

(4) Where subsection (3) applies, no provision for the automatic reappointment of retiring Directors shall apply.

*Appointment of Directors of a Public Company*

**94.—**(1) At a General Meeting of a Company other than a Private Company, a motion for the appointment of 2 or more persons as Directors of the Company by a single resolution must not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being cast against it.

(2) A ballot or poll to elect two or more Directors of a Public Company is void if the ballot or poll requires Members voting for one candidate to vote for another candidate.

(3) A ballot or poll shall not be regarded as requiring a Member to vote for a candidate merely because the Member is required to express a preference among individual candidates in order to cast a valid vote.

*Appointment of Directors for a Private Company with a single Director/single Member*

**95.—**(1) The Director of a Private Company who is its only Director and only Member may appoint another Director by recording the appointment and signing the record.

(2) If a person who is the only Director and the only Member of a Private Company—

(a) dies; or

(b) cannot manage the Company because of the person's mental incapacity,

and a personal representative or trustee is appointed to administer the person's estate or Property, the personal representative or trustee may appoint a person as the Director of the Company.

(3) If—

(a) the office of the Director of a Private Company is vacated because of the bankruptcy of the Director;

(b) the person is the only Director and the only Member of the Company; and

(c) a trustee in bankruptcy is appointed to the person's Property,

the trustee may appoint a person as the Director of the Company.

(4) A person who has a power of appointment under subsection (2) or (3) may appoint themselves as Director.

(5) A person appointed as a Director of a Company under subsection (2) or (3) holds office as if they had been appointed in the usual way.



*How a Company secretary is appointed*

**96.** Where a person is appointed as a Company secretary, the appointment must be made by the Directors.

*Effectiveness of acts by Directors*

**97.—**(1) The acts of a Director or Company secretary shall be valid, notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

(2) This section does not deal with the question as to whether an effective act by a Director or Company secretary —

(a) binds the Company in its dealings with other people; or

(b) makes the Company liable to another person.

(3) The kinds of acts that this section validates are those that are only legally effective if the person doing them is a Director or Company secretary.

*Consent to act*

**98.** No person may be appointed as a Director or Company secretary of a Company unless they have consented in writing to act in the office, have provided that consent to the Company and have not withdrawn that consent.

*Division 2—Remuneration of Directors**Remuneration of Directors*

**99.—**(1) Subject to subsection (2) and section 102, a Company must not pay the Directors of a Company remuneration in excess of the amount from time to time approved by the Members of the Company in a General Meeting.

(2) The Articles of Association of a Private Company may include a provision varying the application of subsection (1) to the Company.

(3) Notwithstanding subsection (1), the Company may also pay the Director's travelling and other expenses properly incurred by the Director in connection with the Company's business.

*Members may obtain information about Directors' remuneration*

**100.—**(1) A Company must disclose the remuneration paid to each Director of the Company or a Subsidiary, if any, by the Company or by an entity controlled by the Company if the Company is directed to disclose the information by Members with at least 5% of the votes that may be cast at a General Meeting of the Company.

(2) The Company must disclose all remuneration paid to the Director, regardless of whether it is paid to the Director in relation to their capacity as Director or another capacity.

(3) The Company must comply with the direction as soon as practicable.

*Approval of remuneration and other benefits*

**101.**—(1) Subject to section 99, the Directors of a Public Company may, subject to any restriction contained in the Articles of Association of the Company, authorise—

- (a) the provision of benefits by the Company to a Director for services as a Director or in any other capacity on arm's length terms;
- (b) the payment by the Company to a Director or former Director, of reasonable compensation for loss of office where the amount of the compensation does not exceed the aggregate of all remuneration payable to the Director as a Director during the immediately preceding 12 months;
- (c) the making of loans by the Company or providing credit to a Director on arm's length terms provided the Company is in the business of providing financial accommodation;
- (d) the giving of guarantees by the Company for debts incurred by a Director on arm's length terms provided the Company is in the business of providing financial accommodation; and
- (e) the entering into of a contract to do any of the things set out in paragraphs (a), (b), (c) and (d),

if the Directors are satisfied that to do so is fair to the Company.

(2) Subsection (1) applies to a benefit, payment, loan, credit, guarantee, contract or other benefit of a financial nature given to any Associate of a Director or Officer as if they had been given to the Director or Officer themselves.

(3) Directors who vote in favour of authorising a benefit, payment, loan, credit, guarantee, contract or other benefit of a financial nature under subsection (1) must sign a certificate stating that, in their opinion, the making of the payment, the provision of the benefit, the making of the loan, the giving of the credit or guarantee, or the entering into of the contract is fair to the Company, and the grounds for that opinion.

(4) Subject to subsection (1), no benefit, payment, loan, credit, guarantee, contract or other benefit of a financial nature may be made or given to a Director or former Director, or Associate of a Director or former Director, of a Public Company unless it has first been approved by the Members of the Company in a General Meeting where—

- (a) the notice of meeting sets out all details known by the Directors and which are relevant to a decision by the members on how to vote on the resolution; and
- (b) no Director or former Director, or Associate of a Director or former Director has voted on the resolution.

(5) Where a payment, loan, credit, guarantee, contract or other benefit of a financial nature is made or given, to which subsection (1) applies and either—

- (a) the provisions of subsection (1), (2) or (4) have not been complied with; or
- (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (3),

the Director or former Director or Associate of a Director or former Director to whom the payment, loan, credit, guarantee, contract or other benefit of a financial nature is made or given, as the case may be, shall be personally liable to the Company for the amount of the payment, loan, credit, guarantee, contract or other benefit of a financial nature or an amount equal to the monetary value of the benefit, except to the extent to which he or she proves that the payment loan, credit, guarantee, contract or other benefit of a financial nature was fair to the Company at the time it was made or given.

(6) Where a payment, loan, credit, guarantee, contract or other benefit of a financial nature is made or given, to which subsection (1) applies and either—

- (a) the provisions of subsection (1), (2) or (4) have not been complied with; or
- (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (2),

the amount of the payment, loan, credit, guarantee, contract or other benefit of a financial nature or an amount equal to the monetary value of the benefit becomes immediately payable or repayable to the Company by the Director or former Director, or Associate of a Director or former Director, notwithstanding the terms of any agreement relating to the giving of the payment, loan, credit, guarantee, contract or other benefit of a financial nature.

(7) The Articles of Association of a Private Company may include a provision varying the application of subsections (1) to (6) to the Company.

*Special rule for Private Companies with a single Director/single Member*

**102.** A person who is the only Director and the only Member of a Private Company shall be paid any remuneration for being a Director that the Company determines by resolution.

*Division 3—Directors' and Officers' Duties*

*Duty to act within powers – civil obligations*

**103.** A Director or other Officer of a Company must—

- (a) act in accordance with the Articles of Association of the Company; and
- (b) only exercise powers for the purposes for which they are conferred.

*Duty to promote the success of the Company – civil obligations*

**104.** A Director or other Officer of a Company must act in the way the Director or Officer considers, in good faith, would be most likely to promote the success of the Company for the benefit of its Members as a whole.

*Duty to exercise independent judgment – civil obligations*

**105.**—(1) A Director or other Officer of a Company must exercise independent judgment.

(2) This duty shall not be infringed by the Director or other Officer of a Company, acting—

- (a) in accordance with an agreement duly entered into by the Company that restricts the future exercise of discretion by its Directors; or
- (b) in a way authorised by the Articles of Association of the Company.

*Duty to exercise reasonable care, skill and diligence – civil obligations*

**106.**—(1) A Director or other Officer of a Company must exercise reasonable care and diligence.

(2) For the purpose of this Act, subsection (1) shall mean the care and diligence that would be exercised by a reasonably diligent person with—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the Director or other Officer in relation to the Company, and
- (b) the general knowledge, skill and experience that the Director or other Officer has.

(3) A Director or other Officer of a Company who makes a business judgment shall be taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they—

- (a) make the judgment in good faith for a proper purpose;
- (b) do not have a material personal interest in the subject matter of the judgment;
- (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (d) rationally believe that the judgment is in the best interests of the Company.

(4) The Director or Officer's belief that the judgment is in the best interests of the Company shall be a rational one unless the belief is one that no reasonable person in their position would hold.

(5) Subsection (2) shall only operate in relation to duties under this section and their equivalent duties at common law or in equity, including the duty of care that arises under the common law principles governing liability for negligence, and it does not operate in relation to duties under any other provision of this Act or under any other law.

(6) In this section—

“business judgment” means any decision, to take or not take action in respect of a matter relevant to the business operations of the Company.

*Duty to avoid conflicts of interest – civil obligations*

**107.**—(1) A Director or other Officer of a Company must avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

(2) Subsection (1) shall apply in particular to the exploitation of any property, information or opportunity and it shall be immaterial whether the Company could take advantage of the property, information or opportunity.

(3) This duty is not infringed if—

- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (b) the matter has been authorised by the Directors in accordance with subsection (4).

(4) Authorisation may be given by the Directors—

- (a) where the Company is a Private Company and nothing in the Articles of Association of the Company invalidates such authorisation, by the matter being proposed to and authorised by the Directors; or
- (b) where the Company is a Public Company and its Articles of Association includes a provision enabling the Directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the Articles of Association.

(5) A Director of a Company must not vote on any resolution of Directors in which the Director has a conflict of interest unless—

- (a) authorised to do so by the Directors in accordance with subsection (4); or
- (b) the Director is a Director of a Private Company and the Articles of Association of the Private Company authorise them to vote on the resolution notwithstanding the conflict of interest.

(6) The authorisation shall be effective only if—

- (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the Director in question or any other interested Director; and
- (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

*Duty not to accept benefits from third parties – civil obligations*

**108.**—(1) A Director or other Officer of a Company must not accept a benefit from a third party conferred by reason of—

- (a) he or she being a Director or other Officer; or
- (b) he or she doing or not doing anything as Director or other Officer.

(2) In this section—

“third party” means a person other than the Company, a Related Body Corporate or a person acting on behalf of the Company or a Related Body Corporate.

(3) Subsection (1) applies to benefits given to any Associate of a Director or Officer as if they had been given to the Director or Officer themselves.

(4) Benefits received by a Director or other Officer from a person by whom his or her services as a Director, Officer or otherwise are provided to the Company shall not be regarded as conferred by a third party.

(5) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(6) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

(7) This section does not apply to Companies with only one Director where the Director is also the sole Member of the Company.

*Duty to declare interest in proposed transaction or arrangement – civil obligations*

**109.**—(1) If a Director of a Company or any Associate of the Director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company, the Director must declare the nature and extent of that interest to the other Directors.

(2) The declaration under subsection (1) may be made—

- (a) in the person’s written consent to act as a Director if the consent is tabled at the first meeting of the Directors after the person consents to act as a Director;
- (b) at a meeting of the Directors, or
- (c) by notice to the Directors in accordance with—
  - (i) section 110 by way of notice in writing, or
  - (ii) section 111 by way of a General notice.

(3) If a declaration of interest under this section proves to be, or becomes inaccurate or incomplete, a further declaration must be made to that effect.

(4) Any declaration required by this section must be made before the Company enters into the transaction or arrangement.

(5) This section does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question and for the purpose of this section, a Director is only treated as being aware of those matters which a Director ought reasonably to be aware of.

(6) The Director does not need to make a declaration of interest or give notice of an interest under this section if—

(a) the interest—

- (i) arises because the Director is a Member of the Company and is held in common with the other Members of the Company;
- (ii) arises in relation to the Director's remuneration as a Director of the Company;
- (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the Members and will not impose any obligation on the Company if it is not approved by the Members;
- (iv) arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company;
- (v) arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in paragraphs (iv) and (v);
- (vi) relates to a contract that insures, or would insure, the Director against liabilities the Director incurs as a Director of the Company but only if the contract does not make the Company or a Related Body Corporate the insurer;
- (vii) relates to any payment by the Company or a Related Body Corporate in respect of an indemnity permitted under section 122 or any contract relating to such an indemnity; or
- (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a Related Body Corporate and arises merely because the Director is a Director of the Related Body Corporate;

(b) the Company is a Private Company and the other Directors are aware of the nature and extent of the interest and its relation to the affairs of the Company; or

(c) all the following conditions are satisfied—

- (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under subsection (1);

- (ii) if a person who was not a Director of the Company at the time when the notice under subsection (1) was given is appointed as a Director of the Company – the notice is given to that person; and
    - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - (d) the Director has given a General notice of the nature and extent of the interest under section 111.
- (7) The declaration required by subsection (1) must—
- (a) give details of—
    - (i) the nature and extent of the interest; and
    - (ii) the relationship between the interest and the affairs of the Company;
  - (b) be given as soon as practicable after the Director or Officer becomes aware of their interest in the matter; and
  - (c) be given at a Directors' meeting or if the declaration is given to the other Directors in accordance with subsection (2)(c), at the first meeting of Directors after the declaration was given.
- (8) The details under subsection (7)(a) must be recorded in the minutes of the meeting.
- (9) A contravention of this section by a Director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (10) This section does not apply to a Private Company that has only one Director.

*Declaration made by notice in writing*

- 110.**—(1) This section applies to a declaration of interest made by notice in writing.
- (2) The Director must send the notice to the other Directors.
- (3) The notice may be sent in—
- (a) hard copy form by hand or by post; or
  - (b) if the recipient has agreed to receive it by electronic means, an agreed electronic form.
- (4) Where a Director declares an interest by notice in writing in accordance with this section—
- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the Directors after the notice is given; and
  - (b) the provisions of section 170 apply as if the declaration had been made at that meeting.



*General notice treated as sufficient declaration*

**111.**—(1) General notice in accordance with this section shall be a sufficient declaration of interest in relation to the matters to which it relates.

(2) For the purposes of this Act, a General notice is a notice given to the Directors of a Company to the effect that the Director—

- (a) has an interest as Member, Officer, employee or otherwise, in a specified Company or entity and shall be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that Company or entity; or
- (b) is connected with a specified person, other than a Company or entity and shall be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person.

(3) The notice shall state the nature and extent of the Director's interest in the Company or entity or, as the case may be, the nature of the Director's connection with the person.

(4) General notice shall not be effective unless—

- (a) it is given at a meeting of the Directors; or
- (b) the Director takes reasonable steps to secure that it is brought up and read at the next meeting of the Directors after it is given.

*Civil consequences of breach of general duties*

**112.**—(1) The consequences of breach or threatened breach of sections 103 to 109 are the same as would apply if the corresponding common law rule or equitable principle applied.

(2) The duties in those sections stated under subsection (1), with the exception of section 106 are, accordingly, enforceable in the same way as any other fiduciary duty owed to a Company by its Directors.

*Cases within more than one of the general duties*

**113.** Except as otherwise provided, more than one of the general duties may apply in any given case.

*Consent, approval or authorisation by Members*

**114.**—(1) In a case where—

- (a) section 107 is complied with by authorisation by the Directors; or
- (b) section 109 is complied with,

without prejudice to any enactment or provision of the Company's Articles of Association, requiring such consent or approval, the transaction or arrangement shall not be liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the Members of the Company.

(2) The application of the general duties shall not be affected by the fact that the matter also falls within this Part, except that where this Part applies and—

- (a) approval is given by the Members of the Company under that Part; or
- (b) the matter is one where it is provided that approval by the Members of the Company is not needed,

it shall not be necessary to comply with section 107 or 108.

(3) Compliance with the general duties does not remove the need for approval by Members of the Company under this Part.

(4) The general duties—

- (a) have effect subject to any rule of law enabling the Company to give authority, specifically or generally, for anything to be done or omitted by the Director or Directors that would otherwise be a breach of duty; and
- (b) where the Company's Articles of Association contain provisions for dealing with conflicts of interest, are not infringed by anything done or omitted by the Director or Directors, in accordance with those provisions.

(5) Except as otherwise provided or unless the context otherwise requires, and notwithstanding any enactment or rule of law, the general duties shall have effect.

*Good faith, use of position and use of information – criminal offences*

**115.—**(1) A Director or other Officer of a Company who—

- (a) breaches his or her duties under sections 104, 105, 107, 108 or 109; and
- (b) was reckless or intentionally dishonest and failed to exercise his or her powers and discharge his or her duties in good faith in the best interests of the Company or for a proper purpose,

commits an offence.

(2) A Director, Officer or employee of a Company who dishonestly uses their position or any information they have obtained because they are or have been a Director, Officer or employee of a Company—

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the Company; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the Company,

commits an offence.

*Territorial application of sections 103 to 115*

**116.** Sections 103 to 115 shall apply to any act or omission by a Director, other Officer or employee of a Foreign Company whether the act or omission occurs inside or outside of Fiji provided the act or omission occurred in connection with—

- (a) the Foreign Company carrying on business in Fiji;
- (b) an act that the Foreign Company does, or proposes to do, in Fiji; or
- (c) a decision by the Foreign Company whether or not to do, or refrain from doing, an act in Fiji.

*Directors of wholly owned Subsidiaries*

**117.** A Director or other Officer of a Company that is a wholly owned Subsidiary of another Company shall be taken to act in good faith in the best interests of the Subsidiary if—

- (a) the Articles of Association of the Subsidiary expressly authorise the Director or other Officer to act in the best interests of the Holding Company;
- (b) the Director or other Officer acts in a way the Director or other Officer considers in good faith would most likely promote the success of the Holding Company; and
- (c) the Subsidiary is not insolvent at the time the Director or other Officer acts and does not become insolvent because of the act of the Director or other Officer.

*Responsibility of secretaries and Directors for certain contraventions*

**118.—**(1) A secretary of a Company or equivalent officer of a Foreign Company contravenes this subsection if the Company contravenes—

- (a) a provision of this Act which requires a Company or Foreign Company to notify the Registrar of a change; or
- (b) any other provision of this Act which requires a Company or Foreign Company to lodge a document with the Registrar.

(2) Each Director of a Private Company contravenes this subsection if—

- (a) the Private Company contravenes a provision referred to in subsection (1); and
- (b) the Private Company does not have a Company secretary when it contravenes that section.

(3) A person does not contravene subsections (1) and (2) if they show that they took all reasonable steps to ensure that the Company complied with the section.

*Reliance on information or advice provided by others***119.**—(1) If—

- (a) a Director or other Officer relies on information, or professional or expert advice, given or prepared by—
  - (i) an employee of the Company whom the Director or other Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - (ii) a professional adviser or expert in relation to matters that the Director believes on reasonable grounds to be within the person's professional or expert competence;
  - (iii) another Director or Officer in relation to matters within the Director's or Officer's authority; or
  - (iv) a committee of Directors on which the Director or other Officer did not serve in relation to matters within the committee's authority;
- (b) the reliance under paragraph (a) was made in good faith; and
- (c) the reasonableness of the Director or other Officer's reliance on the information or advice arises in proceedings brought to determine whether a Director or other Officer has performed a duty under this Part or an equivalent general law duty,

the Director's reliance on the information or advice shall be taken to be reasonable unless the contrary is proved.

(2) The Court shall have regard to the Director or other Officer's reliance under subsection (1) in determining the liability of the Director or other Officer under sections 104 and 106.

*Responsibility for actions of delegate*

**120.**—(1) If the Directors delegate a power under section 123, a Director shall be responsible for the exercise of the power by the delegate as if the power had been exercised by the Director himself or herself.

## (2) A Director shall not be responsible under subsection (1) if—

- (a) the Director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on Directors of the Company by this Act and the Company's Articles of Association; and
- (b) the Director believed—
  - (i) on reasonable grounds; and
  - (ii) in good faith,

that the delegate was reliable and competent in relation to the power delegated.

*Interaction of section 109 with other laws*

**121.** Section 109 has effect in addition to, and not in derogation of—

- (a) any general law rule about conflicts of interest; and
- (b) any provision in a Company's Articles of Association that restricts a Director from—
  - (i) having an interest in a matter; or
  - (ii) holding an office or possessing property,

involving duties or interests that conflict with their duties or interests as a Director.

*Division 4—Restrictions on Indemnities and Insurance**Indemnity and insurance*

**122.—**(1) In this section, unless the context otherwise requires,—

“effect insurance” includes pay, whether directly or indirectly, the costs of the insurance;

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises, and “indemnity” shall have a corresponding meaning; and

“Officer”, in relation to a Company, includes an Officer, a former Director, an Auditor, an employee and former employee of the Company.

(2) A Company may, if expressly authorised by its Articles of Association, indemnify an Officer of the Company or a Related Body Corporate for any costs incurred by them in any proceeding—

- (a) that relates to liability for any act or omission in his or her capacity as an Officer of the Company; and
- (b) in which judgment is given in their favour, or in which they are acquitted, or which is discontinued.

(3) A Company may, if expressly authorised by its Articles of Association, indemnify an Officer of a Company or Related Body Corporate in respect of—

- (a) liability to any person other than the Company or a Related Body Corporate for any act or omission in their capacity as an Officer of a Company; or
- (b) costs incurred by that Officer of the Company in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of—

- (i) a breach;
- (ii) in the case of a Director or former Director of the Company, of the duty specified in section 104; or

- (iii) in the case of any other Officer of the Company, of any fiduciary duty owed to the Company or Related Body Corporate.

(4) An indemnity given in breach of this section is void.

(5) A Company may, if expressly authorised by its Articles of Association and with the prior approval of its Directors, effect insurance for an Officer of the Company or a Related Body Corporate in respect of—

- (a) liability, not being liability to the Company or criminal liability, for any act or omission in his or her capacity as an Officer of the Company or a Related Body Corporate;
- (b) costs incurred by that Officer of the Company or a Related Body Corporate in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by an Officer of the Company or a Related Body Corporate in defending any criminal proceedings—
  - (i) that have been brought against the Officer of the Company or a Related Body Corporate in relation to any act or omission in their capacity as an Officer of the Company or a Related Body Corporate; and
  - (ii) in which they are acquitted.

(6) The Directors who vote in favour of authorising the effecting of insurance under subsection (5) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

(7) The board of a Company must ensure that particulars of any indemnity given to, or insurance effected for, any Officer of the Company or a Related Body Corporate are entered in the interests register.

(8) Where insurance is effected for an Officer of the Company or a Related Body Corporate and—

- (a) the provisions of either subsection (6) or (7) have not been complied with; or
- (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (6),

the Officer of the Company or a Related Body Corporate shall be personally liable to the Company for the cost of effecting the insurance except to the extent that he or she proves that it was fair to the Officer of the Company or a Related Body Corporate at the time the insurance was effected.

*Division 5—Powers**Delegation*

**123.—**(1) Unless the Company's Articles of Association provide otherwise, the Directors of a Company may delegate any of their powers to—

- (a) a committee of Directors;
- (b) a Director;
- (c) an employee of the Company; or
- (d) any other person.

(2) The delegate must exercise the powers delegated in accordance with any directions of the Directors.

(3) The exercise of the power by the delegate shall be as effective as if the Directors had exercised it.

*Single Director/Member of Private Companies*

**124.—**(1) The Director of a Private Company who is its only Director and only Member may exercise all the powers of the Company except any powers that this Act or the Company's Articles of Association, if any, requires the Company to exercise in a General Meeting.

(2) The business of the Company shall be managed by or under the direction of the Director.

(3) The Director of a Private Company who is its only Director and only Member may sign, draw, accept, endorse or otherwise execute a negotiable instrument and may further determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

*Right of access to Company Books*

**125.—**(1) A Director of a Company may inspect the Books of the Company, other than its Financial Records at all reasonable times for the purposes of a legal proceeding—

- (a) to which the person is a party;
- (b) that the person proposes in good faith to bring; or
- (c) that the person has reason to believe will be brought against them.

(2) A person who has ceased to be a Director of a Company may inspect the Books of the Company, including its Financial Records at all reasonable times for the purposes of a legal proceeding—

- (a) to which the person is a party;
- (b) that the person proposes in good faith to bring; or
- (c) that the person has reason to believe will be brought against them.

(3) The right stated under subsection (2) shall continue for 7 years after the person has ceased to be a Director of the Company.

(4) A person authorised to inspect Company Books under this section for the purposes of a legal proceeding may make copies of the Company Books for the purposes of those proceedings.

(5) A Company shall allow a person to exercise their rights to inspect or take copies of the Company Books under this section.

(6) Subject to subsections (1), (2) and (3), this section does not limit any right of access to Company Books that a person has.

*Division 6—Resignation, Retirement or Removal of Directors*

*Director of a Public Company cannot be removed by other Directors*

**126.** A resolution, request or notice of any or all of the Directors of a Public Company shall be void to the extent that it purports to—

- (a) remove a Director from their office; or
- (b) require a Director to vacate their office.

*Directors, alternate Directors and secretaries ceasing to hold office*

**127.—**(1) The office of Director, alternate Director or secretary of a Company shall be deemed vacated if the person holding that office—

- (a) resigns in accordance with subsection (2);
- (b) is removed from office in accordance with this Act or the Company's Articles of Association;
- (c) becomes disqualified from acting as an Officer of a Company in accordance with Part 12;
- (d) when in the case of a Public or a Subsidiary of a Public Company, the conclusion of the first AGM of a Public Company;
- (e) dies; or
- (f) otherwise vacates office in accordance with the Company's Articles of Association.

(2) A Director, alternate Director or secretary of a Company may resign from office by signing a written notice of resignation and delivering it to the Register Officer of the Company and the notice is effective when it is received at that address or at a later time specified in the notice.

(3) Notwithstanding the vacation of office, a person who held office as a Director, alternate Director or Company secretary remains liable under the provisions of this Act that impose liabilities on Director, alternate Director or Company secretary in relation to acts and omissions and decisions made while that person was a Director, alternate Director or Company secretary.



## PART 11—PUBLIC INFORMATION ABOUT DIRECTORS AND SECRETARIES

*Director, alternate Director or secretary may notify Registrar of resignation or retirement*

**128.** Where a Director, alternate Director or Company secretary retires or resigns, he or she may give the Registrar written notice of the retirement or resignation in the prescribed form.

*Notice of name and address of Directors, alternate Directors and secretaries to the Registrar*

**129.—**(1) A Company must lodge with the Registrar a notice in the prescribed form setting out the following personal details of a Director, alternate Director or Company secretary within 28 days after they are appointed—

- (a) their given and family names;
- (b) all of their former given and family names;
- (c) their date and place of birth; and
- (d) their usual residential address.

(2) The Company must lodge with the Registrar notice in the prescribed form of any change in the personal details of a Director, alternate Director or Company secretary within 28 days after the change.

(3) If a person ceases to be a Director, alternate Director or Company secretary of the Company, the Company must lodge with the Registrar notice in the prescribed form of the cessation within 28 days.

(4) Subsection (3) does not apply if the person gives the Registrar a written notice of the person's retirement or resignation as a Director, alternate Director or Company secretary of the Company in accordance with section 128.

*Director and Company secretary must give information to Company*

**130.** A Director, alternate Director or Secretary must give the Company any information the Company needs to comply with section 129 within 7 days after their appointment, change of details or cessation of appointment unless they have previously given the information to the Company.

*The Registrar's power to ask for information about person's position as Director, alternate Director or Company secretary*

**131.—**(1) If the Registrar has reason to suspect that there may have been—

- (a) a contravention of this Act; or
- (b) a contravention of another law of Fiji, being a contravention that—
  - (i) concerns the management or affairs of a Company or Managed Investment Scheme; or
  - (ii) involves fraud or dishonesty and relates to a Company or Managed Investment Scheme or to Securities,

the Registrar may ask a person, in writing, to inform the Registrar—

- A. whether the person is a Director, alternate Director or Company secretary of a particular Company; and
- B. if the person is no longer a Director, alternate Director or Company secretary of the Company, the date on which the person ceased to be a Director, alternate Director or Company secretary.

(2) The person shall give the information to the Registrar in writing by the date specified in the request.

## PART 12—DISQUALIFICATION FROM ACTING AS AN OFFICER

### *Disqualified person not to manage Companies*

**132.** Any person who is disqualified from acting as an Officer of a Company under this Part commits an offence if they—

- (a) consent to act as an Officer of a Company;
- (b) make, or participate in making decisions that affect the whole, or a substantial part, of the business of the Company;
- (c) exercise the capacity to affect significantly the Company's financial standing; or
- (d) communicate instructions or wishes, other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company to the Directors of the Company—
  - (i) knowing that the Directors are accustomed to act in accordance with the person's instructions or wishes; or
  - (ii) intending that the Directors will act in accordance with those instructions or wishes.

### *Automatic disqualification*

**133.—(1)** A person becomes disqualified from acting as an Officer of a Company if the person—

- (a) is convicted of an offence that—
  - (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of a Company;
  - (ii) concerns an act that has the capacity to affect significantly a Company's financial standing;
  - (iii) is a contravention of this Act, is punishable by imprisonment for a period greater than 12 months and is sentenced to a period of imprisonment greater than 12 months; or

- (iv) involves fraud, dishonesty or breach of trust and is punishable by imprisonment for at least 3 months; or
  - (b) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months in Fiji if the offence was committed in Fiji.
- (2) The period of disqualification under subsection (1) starts on the day the person is convicted and lasts for—
- (a) if the person does not serve a term of imprisonment – 2 years after the day on which they are convicted; or
  - (b) if the person serves a term of imprisonment – 2 years after the day on which they are released from prison.
- (3) A person is disqualified from acting as an Officer of a Company if the person is an undischarged bankrupt under the laws of Fiji or another country for so long as the person is an undischarged bankrupt under the laws of Fiji or another country.
- (4) A person is disqualified from acting as an Officer of a Company if the person is disqualified, either automatically, or under an order made by a court of a foreign country that is in force, from being—
- (a) a Director of a Foreign Company; or
  - (b) concerned in the management of a Foreign Company.
- (5) The Court may, on the application of the Registrar, extend the period of disqualification by up to an additional 15 years and in determining whether an extension is justified and if so, the period of disqualification, the Court may have regard to any matters that the Court considers appropriate.

*Court's power of disqualification*

**134.—**(1) On application by the Registrar, the Court may disqualify a person from acting as an Officer of a Company for a period of up to 20 years if the Court considers appropriate, on the following grounds—

- (a) if—
  - (i) within the last 7 years, the person has been an Officer of two or more Companies when they have failed; and
  - (ii) the Court is satisfied that the manner in which the Company was managed was wholly or partly responsible for the Company failing;
- (b) if the person has been an Officer of at least two Companies that have contravened this Act or the Repealed Acts while he or she was an Officer of the Company, each time the person has failed to take reasonable steps to prevent the contravention; or

- (c) if the person is disqualified under the law of a foreign country from—
  - (i) being a director of, or being concerned in the management of, a Foreign Company; or
  - (ii) carrying on activities that the Court is satisfied are substantially similar to being a director of, or being concerned in the management of, a Foreign Company,

and the Court is otherwise satisfied that the disqualification is justified.

(2) In determining whether the disqualification is justified, the Court may have regard to—

- (a) the person's conduct in relation to the management, business or property of any Company;
- (b) whether the disqualification would be in the public interest; and
- (c) any other matter that the Court considers appropriate.

(3) For the purposes of subsection (1)(a), a Company fails if—

- (a) a Court orders the Company to be wound up under Part 39 because the Court is satisfied that the Company is insolvent;
- (b) the Company enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid;
- (c) the Company ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid;
- (d) a Receiver or Manager, or provisional liquidator is appointed in relation to the Company; or
- (e) the Company is wound up and a liquidator lodges a statement about the Company's inability to pay its debts.

## PART 13—DIRECTORS' MEETINGS

### *Division 1—Resolutions and Declarations without Meetings*

#### *Resolutions and declarations of one Director Private Companies*

**135.—**(1) The Director of a Private Company that has only one Director may pass a resolution by recording it and signing the record.

(2) The Director of a Private Company that has only one Director may make a declaration by recording it and signing the record.

(3) Recording and signing the declaration satisfies any requirement in this Act that the declaration be made at a Directors' meeting.

*Division 2—Directors' Meetings**Use of technology*

**136.**—(1) A Directors' meeting may be called or held using any technology consented to by all the Directors.

(2) The consent under subsection (1) may be a standing one.

(3) A Director may only withdraw his or her consent within a reasonable period of time before the meeting.

*Chairing Directors' meetings*

**137.**—(1) The Directors may elect a Director to chair their meetings.

(2) The Directors may determine the period for which the Director shall be the chair under subsection (1).

(3) The Directors shall elect a Director present to chair a meeting, or part of it, if—

- (a) a Director has not already been elected to chair the meeting; or
- (b) a previously elected chair is not available or declines to act, for the meeting or part of the meeting.

**PART 14—MEETINGS OF MEMBERS***Division 1—Resolutions without Meetings**Resolutions of one Member Companies*

**138.**—(1) A Company that has only one Member may pass a resolution by the Member recording it and signing the record.

(2) If this Act requires information or a document relating to the resolution to be lodged with the Registrar, that requirement shall be satisfied by lodging the information or document with the resolution that is passed.

*Division 2—Who May Call Meetings of Members**Calling of General Meeting by Directors when requested by Members*

**139.**—(1) The Directors of a Company must call and arrange to hold a General Meeting on the request of Members with at least 5% of the votes that may be cast at the General Meeting.

(2) The request under subsection (1) must—

- (a) be in writing;
- (b) state any resolution to be proposed at the meeting;
- (c) be signed by the Members making the request; and
- (d) be given to the Company.

(3) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

(4) The percentage of votes that Members have shall be worked out as at the midnight before the request is given to the Company.

(5) The Directors must call the meeting within 21 days after the request is given to the Company under subsection (2).

(6) The meeting must be held not later than 2 months after the request is given to the Company.

*Failure of Directors to call General Meeting*

**140.**—(1) Members with more than 50% of the votes of all of the Members who make a request under section 139 may call and arrange to hold a General Meeting if the Directors do not do so within 21 days after the request is given to the Company.

(2) The meeting must be called in the same way, so far as is possible, in which General Meetings of the Company may be called and the meeting must be held not later than 3 months after the request is given to the Company.

(3) To call the meeting, the Members requesting the meeting may ask the Company under section 86 for a copy of the register of Members.

(4) Notwithstanding section 86(7)(b), the Company must give the Members the copy of the register without charge.

(5) The Company must pay the reasonable expenses incurred by the Members because the Directors failed to call and hold the meeting.

(6) The Company may recover the amount of the expenses from the Directors, however, a Director shall not be liable for the amount if they prove that they took all reasonable steps to cause the other Directors to comply with section 139.

(7) The Directors who are liable under this section shall be jointly and individually liable for the amount payable under subsection (5).

(8) Where a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

*Calling of meetings of Members by the Court*

**141.**—(1) A Court may order a meeting of the Company's Members to be called if it is impracticable to call the meeting in any other way.

(2) The Court may make the order on application by—

(a) any Director; or

(b) any Member who would be entitled to vote at the meeting.

*Division 3—How to Call Meetings of Members**Amount of notice of meetings*

**142.**—(1) Subject to subsection (2), at least 21 days' notice must be given of a meeting of a Company's Members, whether the Company is a Private or Public Company, Listed or not Listed.

(2) A Company may call on shorter notice—

- (a) an AGM, if all the Members entitled to attend and vote at the AGM agree before or at the AGM; and
- (b) any other General Meeting, if Members with at least 95% of the votes that may be cast at the meeting, agree, before or at the General Meeting.

(3) A Company cannot call an AGM or other General Meeting on shorter notice if it is—

- (a) a meeting of the Members of a Public Company at which a resolution will be moved to—
  - (i) remove a Director under section 126(a); or
  - (ii) appoint a Director in place of a Director removed under that section; or
- (b) a meeting of a Company at which a resolution will be moved to remove an Auditor under section 427.

*Notice of meetings of Members to Members and Directors*

**143.**—(1) Written notice of a meeting of a Company's Members must be given individually to each Member entitled to vote at the meeting and to each Director and such Notice need only be given to one Member of a joint membership.

(2) Notice to joint Members must be given to the joint Member named first in the register of Members.

(3) A Company may give the notice of meeting to a Member—

- (a) personally;
- (b) by sending it by post to the address for the Member in the register of Members or the alternative address, if any, nominated by the Member;
- (c) by sending it to the fax number or electronic address, if any, nominated by the Member;
- (d) by sending it to the Member by other electronic means, if any, nominated by the Member;
- (e) by notifying the Member in accordance with subsection (4); or
- (f) by any other means that the Company's Articles of Association permits.

(4) Without limiting the provisions of subsection (3), if the Member nominates—

- (a) an electronic means, (the “nominated notification means”) by which the Member may be notified that notices of meeting are available; and
- (b) an electronic means, (the “nominated access means”) the Member may use to access notices of meeting,

the Company may give the Member notice of the meeting by notifying the Member, by using the nominated notification means,—

- (i) that the notice of meeting is available; and
- (ii) how the Member may use the nominated access means to access the notice of meeting.

(5) A notice of meeting sent by post shall be taken to be given 3 days after it is posted.

(6) A notice of meeting sent by fax, or other electronic means, shall be taken to be given on the business day after it is sent.

(7) A notice of meeting given to a Member by notifying the Member in accordance with subsection (4) is taken to be given on the business day after the day on which the Member is notified that the notice of meeting is available.

*Auditor entitled to notice and other communications*

**144.** A Company must give its Auditor—

- (a) notice of a General Meeting in the same way that a Member of the Company is entitled to receive notice; and
- (b) any other communication relating to the General Meeting that a Member of the Company is entitled to receive.

*Contents of notice of meetings of Members*

**145.—**(1) A notice of a meeting of Company’s Members must—

- (a) set out the place, date and time for the meeting and, if the meeting is to be held using technology, details of the technology used to facilitate the meeting and any access details and requirements;
- (b) state the general nature of the meeting’s business;
- (c) if a Special Resolution is to be proposed at the meeting – set out an intention to propose the Special Resolution and state the resolution;
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information—
  - (i) that the Member has a right to appoint a proxy;
  - (ii) whether or not the proxy needs to be a Member of the Company; and



- (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and

(e) copies of the Financial Statements for the last Financial Year.

(2) The information included in the notice of meeting shall be worded and presented in a clear, concise and effective manner.

*Notice of adjourned meetings*

**146.** When a meeting is adjourned, a new notice of the resumed meeting must be given if the meeting is adjourned for 28 days or more.

*Division 4—Members Rights to Put Resolutions*

*Members' resolutions*

**147.—**(1) Members with at least 10% of the votes that may be cast on the resolution, may give a Company notice of a resolution that they propose to move at a General Meeting.

(2) The notice shall—

- (a) be in writing;
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the Members proposing to move the resolution.

(3) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

(4) The percentage of votes that Members have shall be worked out as at the midnight before the Members give the notice.

*Company giving notice of Members' resolutions*

**148.—**(1) If a Company has been given notice of a resolution under section 147, the resolution shall be considered at the next General Meeting that occurs more than 2 months after the notice is given.

(2) The Company must give all its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(3) The Company is responsible for the cost of giving its Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.

(4) The Members requesting the meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Company does not receive the Members' notice in time to send it out with the notice of meeting.

(5) At a General Meeting, the Company may resolve to meet the expenses itself.

(6) The Company shall not need to give notice of the resolution—

- (a) if it is more than 1,000 words long or defamatory; or
- (b) if the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

*Members' statements to be distributed*

**149.**—(1) Members may request a Company to give to all its Members a statement provided by the Members making the request about—

- (a) a resolution that is proposed to be moved at a General Meeting; or
- (b) any other matter that may be properly considered at a General Meeting.

(2) The request must be made by Members with at least 10% of the votes that may be cast on the resolution.

(3) The request must be—

- (a) in writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

(4) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

(5) The percentage of votes that Members have is to be worked out as at the midnight before the request is given to the Company.

(6) After receiving the request, the Company must distribute to all its Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a General Meeting.

(7) The Company shall be responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

(8) The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting.

(9) At a General Meeting, the Company may resolve to meet the expenses itself.

(10) The Company shall not need to comply with the request—

- (a) if the statement is more than 1,000 words long or defamatory; or

- (b) if the Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

### *Division 5—Holding Meetings of Members*

#### *Purpose*

**150.** A meeting of a Company's Members must be held for a proper purpose.

#### *Time and place for meetings of Members*

**151.** A meeting of a Company's Members must be held at a reasonable time and place.

#### *Use of technology*

**152.—**(1) A Company may hold a meeting of its Members using any technology that gives the Members as a whole a reasonable opportunity including, but not limited to, technology which facilitates the use of two or more venues to participate and is consented to by all the Directors.

(2) The consent under subsection (1) may be a standing one.

(3) A Director may only withdraw his or her consent under this section within a reasonable period before the meeting.

#### *Auditor's right to be heard at General Meetings*

**153.—**(1) A Company's Auditor is entitled to attend any General Meeting of the Company.

(2) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.

(3) The Auditor is entitled to be heard even if—

(a) the Auditor retires at the meeting; or

(b) the meeting passes a resolution to remove the Auditor from office.

(4) The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

#### *Adjourned meetings*

**154.—**(1) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(2) Only unfinished business shall be transacted at a meeting resumed after an adjournment.

*Division 6—Proxies and Company Representatives**Who can appoint a proxy*

**155.**—(1) A Member of a Company who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person, whether a Member or not, as the Member's proxy to attend and vote for the Member at the meeting.

(2) The person appointed as the Member's proxy may be an individual or a Company.

(3) The appointment may specify the proportion or number of votes that the proxy may exercise.

(4) Each Member may appoint a proxy and where a Member or a Public Company is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies.

(5) Where the Member appoints two proxies under subsection (4) and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.

(6) Any fractions of votes resulting from the application of subsection (3) or (4) shall be disregarded.

*Rights of proxies*

**156.**—(1) A proxy appointed to attend and vote for a Member shall have the same rights as the Member to—

(a) speak at the meeting;

(b) vote, but only to the extent allowed by the appointment; and

(c) join in a demand for a poll.

(2) A Company's Articles of Association may provide that a proxy is not entitled to vote on a show of hands.

(3) Where under subsection (2), the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

(4) A Company's Articles of Association may provide for the effect that a Member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the Member.

(5) Where the Articles of Association does provide for the effect that a Member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the Member, a proxy's authority to speak and vote for a Member at a meeting shall be suspended while the Member is present at the meeting.

*Appointing a proxy*

**157.**—(1) An appointment of a proxy shall be valid if it is signed by the Member of the Company making the appointment and contains the following information—

(a) the name and address of the Member;

- (b) the name of the Company;
- (c) the name of the proxy or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

(2) An undated appointment shall be taken to have been dated on the day it is given to the Company.

(3) An appointment may specify the way the proxy shall vote on a particular resolution.

(4) If an appointment does specify under subsection (3)—

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has two or more appointments that specify different ways to vote on the resolution, then the proxy must not vote on a show of hands; and
- (c) the proxy must vote on a poll, and must vote that way.

(5) If a proxy is also a Member, this section does not affect the way that the person can cast any vote they hold as a Member.

(6) An appointment does not have to be witnessed.

(7) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

#### *Proxy documents*

**158.**—(1) For an appointment of a proxy for a meeting of a Company's Members to be effective, the following documents shall be received by the Company at least 48 hours before the meeting—

- (a) the appointment of the proxy; and
- (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.

(2) Where a meeting of a Company's Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting shall be effective for the resumed part of the meeting.

(3) A Company receives a document referred to in subsection (1) when the document is received at any of the following—

- (a) the Company's registered office;
- (b) a fax number at the Company's registered office; or
- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

(4) Any provision contained in a Company's Articles of Association shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the Company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at that meeting.

*Validity of proxy vote*

**159.**—(1) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

(2) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy shall be valid even if, before the proxy votes—

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the proxy's appointment;
- (d) the Member revokes the authority under which the proxy was appointed by a third party; or
- (e) the Member transfers the share in respect of which the proxy was given.

*Company representative*

**160.**—(1) A Company may appoint an individual as a representative to exercise all or any of the powers the Company may exercise—

- (a) at meetings of a Company's Members;
- (b) at meetings of creditors or Debenture Holders;
- (c) relating to resolutions to be passed without meetings; or
- (d) in the capacity of a Member's proxy appointed under section 155(1).

(2) The appointment may set out restrictions on the representative's power and where the appointment is to be by reference to a position held, the appointment must identify the position.

(3) A Company may appoint more than one representative but only one representative may exercise the body's powers at any one time.

(4) Unless otherwise specified in the appointment, the representative may exercise, on the Company's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

*Division 7—Voting at Meetings of Members**Number of votes*

**161.**—(1) Subject to any right or restriction attached to any class of Shares or any contrary provision in the Company's Articles of Association, at a meeting of Members of a Company with a share capital—

- (a) on a show of hands, each Member shall have one vote; and
- (b) on a poll, each Member shall have one vote for each Share they hold.

(2) Subject to any contrary provision in the Company's Articles of Association, each Member of a Company that does not have a share capital has one vote, both on a show of hands and a poll.

*Jointly held Shares*

**162.** If a Share is held jointly and more than one Member votes in respect of that Share, only the vote of the Member whose name appears first in the register of Members counts.

*Objections to right to vote*

**163.** A challenge to a right to vote at a meeting of a Company's Members may only be made at the meeting and must be determined by the chair, whose decision is final.

*Votes need not all be cast in the same way*

**164.** On a poll, a person voting who is entitled to two or more votes—

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

*How voting is carried out*

**165.**—(1) A resolution put to the vote at a meeting of a Company's Members shall be decided on a show of hands unless a poll is demanded.

(2) On a show of hands, a declaration by the chair shall be conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received.

(3) Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

*Matters on which a poll may be demanded*

**166.**—(1) Subject to subsection (2), a poll may be demanded on any resolution.

(2) A Company's Articles of Association may provide that a poll cannot be demanded on any resolution concerning—

- (a) the election of the chair of a meeting; or
- (b) the adjournment of a meeting.

(3) A demand for a poll may be withdrawn.

*When a poll is effectively demanded*

**167.**—(1) At a meeting of a Company's Members, a poll may be demanded by—

- (a) at least 5 Members entitled to vote on the resolution;
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

(2) A Company's Articles of Association may provide that fewer Members or Members with a lesser percentage of votes may demand a poll.

(3) The poll may be demanded—

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

(4) The percentage of votes that Members have is to be worked out as at the midnight before the poll is demanded.

*When and how polls must be taken*

**168.**—(1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

(2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

*Division 8—AGMS of Companies**Single Member Companies not required to hold AGM*

**169.** A Company which has only one Member is not required to hold an AGM.

*Other Companies must hold AGM*

**170.**—(1) A Company must hold an AGM within 18 months after its registration.

(2) Following its first AGM, a Company must hold an AGM at least once in each calendar year and within 6 months after the end of its Financial Year.

(3) An AGM is to be held in addition to any other meeting held by a Company in the year.

*Extension of time for holding AGM*

**171.**—(1) A Company may lodge an application with the Registrar to extend the period within which section 170 requires the Company to hold an AGM.

(2) An application under subsection (1) may only be made before the end of the period within which the Company would otherwise be required to hold an AGM.

(3) The Registrar may extend the period in writing specifying the period of the extension and imposing conditions on the extension which the Company must comply with.



(4) If a Company is granted an extension under subsection (3), the Company must hold its AGM within the extended period.

*Auditor required to attend Listed Company's AGM*

**172.** A Listed Company's Auditor must attend the Company's AGM.

*Questions and comments by Members on Company management at AGM*

**173.** The chair of a Listed Company's AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company, including asking questions of the Company's Auditor.

PART 15—MINUTES OF MEETINGS

*Minutes*

**174.—**(1) A Company must keep minute books in which it records within 28 days—

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) proceedings and resolutions of Directors' meetings, including meetings of a committee of Directors;
- (c) resolutions passed by Members without a meeting;
- (d) resolutions passed by Directors without a meeting; and
- (e) if the Company is a Private Company with only one Director, the making of declarations by the Director.

(2) The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following—

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

(3) The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

(4) The Director of a Private Company with only one Director must sign the minutes of the making of a declaration by the Director within a reasonable time after the declaration is made.

(5) A Company must keep its minute books at—

- (a) its Registered Office;
- (b) its principal place of business in Fiji; or
- (c) another place in Fiji approved by the Registrar.

(6) A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

*Members' access to minutes*

**175.**—(1) A Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

- (2) A Member of a Company may ask the Company in writing for a copy of—
- (a) any minutes of a meeting of the Company's Members or an extract of the minutes; or
  - (b) any minutes of a resolution passed by Members without a meeting.
- (3) Pursuant to subsection (2), the Company must send the minutes—
- (a) within 14 days after the Member asks for it; or
  - (b) within any longer period that the Registrar approves.

## PART 16—MEMBERS' RIGHTS AND REMEDIES

*Division 1—Oppressive Conduct of Affairs**Grounds for Court order*

**176.**—(1) The Court may make an order under section 177 if—

- (a) the conduct of a Company's Affairs;
- (b) an actual or proposed act or omission by or on behalf of a Company; or
- (c) a resolution, or a proposed resolution, of Members or a Class of Members of a Company,

is either—

- (i) contrary to the interests of the Members as a whole; or
- (ii) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member or Members whether in that capacity or in any other capacity.

(2) For the purposes of this Part, a person to whom a Share in the Company has been transmitted by will or by operation of law is taken to be a Member of the Company.

*Orders the Court can make*

**177.**—(1) The Court can make any order under this section that it considers appropriate in relation to the Company, including an order—

- (a) that the Company be wound up;
- (b) that the Company's existing Articles of Association be amended or repealed;
- (c) to regulate the conduct of the Company's Affairs in the future;
- (d) for the purchase of any Shares by any Member or person to whom a Share in the Company has been transmitted by will or by operation of law;

- (e) for the purchase of Shares with an appropriate reduction of the Company's share capital;
- (f) for the Company to institute, prosecute, defend or discontinue specified proceedings;
- (g) authorising a Member, or a person to whom a Share in the Company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the Company;
- (h) appointing a Receiver or Manager of any or all of the Company's Property;
- (i) restraining a person from engaging in specified conduct or from doing a specified act; or
- (j) requiring a person to do a specified act.

(2) If an order that a Company be wound up is made under this section, the provisions of this Act relating to the winding up of Companies apply—

- (a) as if the order were made under Part 39; and
- (b) with such changes as are necessary.

(3) If an order made under this section repeals or modifies a Company's Articles of Association, or requires the Company to adopt Articles of Association, the Company does not have the power under section 46(6) to change or repeal the Articles of Association if that change or repeal would be inconsistent with the provisions of the order, unless—

- (a) the order states that the Company does have the power to make such a change or repeal; or
- (b) the Company first obtains the leave of the Court.

*Who can apply for order*

**178.** An application for an order under section 176 in relation to a Company may be made by—

- (a) a Member of the Company, even if the application relates to an act or omission that is against—
  - (i) the Member in a capacity other than as a Member; or
  - (ii) another Member in their capacity as a Member;
- (b) a person who has been removed from the register of Members because of a selective reduction of capital;
- (c) a person who has ceased to be a Member of the Company if the application relates to the circumstances in which they ceased to be a Member;
- (d) a person to whom a Share in the Company has been transmitted by will or by operation of law; or

- (e) a person whom the Registrar thinks appropriate having regard to investigations it is conducting or has conducted into—
  - (i) the Company's Affairs; or
  - (ii) matters connected with the Company's Affairs.

*Requirement for person to lodge order*

**179.** If an order is made under section 176, the applicant must lodge a copy of the order in the prescribed form with the Registrar within 14 days after it is made.

*Division 2—Proceedings on Behalf of a Company by Members and Others*

*Bringing, or intervening in, proceedings on behalf of a Company*

**180.—**(1) Subject to subsection (3), the Court may, on the application of a Member or Director of a Company, grant leave to that Member or Director to—

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

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court shall have regard to—

- (a) the likelihood of the proceedings succeeding;
- (b) the costs of the proceedings in relation to the relief likely to be obtained;
- (c) any action already taken by the Company or a Related Body Corporate to obtain relief; and
- (d) the interests of the Company or Related Body Corporate in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

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

- (a) the Company or Related Body Corporate does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the Company or Related Body Corporate that the conduct of the proceedings should not be left to the Directors or to the determination of the Members as a whole.

(4) Notice of the application must be served on the Company or Related Body Corporate.

(5) The Company or Related Body Corporate—

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

(6) Except as provided in this section, a Member is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a Company or a Related Body Corporate.

*Effect of ratification by Members*

**181.**—(1) If the Members of a Company ratify or approve conduct, the ratification or approval does not—

- (a) prevent a person from bringing or intervening in proceedings with leave under section 180 or from applying for leave under that section; and
- (b) have the effect that proceedings brought or intervened in with leave under section 180 must be determined in favour of the defendant, or that an application for leave under that section must be refused.

(2) If Members of a Company ratify or approve conduct, the Court may take the ratification or approval into account in deciding what order or judgment, including as to damages to make in proceedings brought or intervened in with leave under section 180 or in relation to an application for leave under that section and in doing this, it must have regard to—

- (a) how well informed about the conduct the Members were when deciding whether to ratify or approve the conduct; and
- (b) whether the Members who ratified or approved the conduct were acting for proper purposes.

*Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave*

**182.** Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

*General powers of the Court*

**183.**—(1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including—

- (a) interim orders;
- (b) directions about the conduct of the proceedings, including requiring mediation;
- (c) an order directing the Company, or an Officer of the Company, to do, or not to do, any act; and

(d) an order appointing an independent person to investigate, and report to the Court on—

- (i) the financial affairs of the Company or Related Body Corporate;
- (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or
- (iii) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.

(2) A person appointed by the Court under subsection (1)(d) is entitled, on giving reasonable notice to the Company or Related Body Corporate, to inspect any Books of the Company or Related Body Corporate for any purpose connected with their appointment.

(3) If the Court appoints a person under subsection (1)(d)—

- (a) the Court must also make an order stating who is liable for the remuneration and expenses of the person appointed;
- (b) the Court may vary the order at any time;
- (c) the persons who may be made liable under the order, or the order as varied, are—
  - (i) all or any of the parties to the proceedings or application; and
  - (ii) the Company or Related Body Corporate; and
- (d) if the order, or the order as varied, makes two or more persons liable, the order may also determine the nature and extent of the liability of each of those persons.

(4) Subsection (3) does not affect the powers of the Court as to costs.

*Power of the Court to make costs orders*

**184.**—(1) The Court may, at any time make any order it considers appropriate about the costs of the following persons in relation to proceedings brought or intervened in with leave under section 180 or an application for leave under that section—

- (a) the person who applied for or was granted leave;
- (b) the Company or Related Body Corporate; or
- (c) any other party to the proceedings or application.

(2) An order under this section may require indemnification for costs.

*Division 3—Class Rights**Varying and cancelling class rights*

**185.**—(1) If a Company's Articles of Association sets out the procedure for varying or cancelling—

- (a) for a Company with a share capital – rights attached to Shares in a class of Shares; or
- (b) for a Company without a share capital – rights of Members in a class of Members,

those rights may be varied or cancelled only in accordance with the procedure and the procedure may be changed only if the procedure itself is complied with.

(2) If a Company's Articles of Association does not set out the procedure of the kind described in section 237(1), those rights may be varied or cancelled only by Special Resolution of the Company and—

- (a) by Special Resolution passed at a meeting—
  - (i) for a Company with a share capital of the class of Members holding Shares in the class; or
  - (ii) for a Company without a share capital of the class of Members whose rights are being varied or cancelled; or
- (b) with the written consent of Members with at least 75% of the votes in the class.

(3) The Company must give written notice of the variation or cancellation to the Members of the class within 7 days after the variation or cancellation is made.

*Variation of rights to apply to all shares in a class*

**186.** Where any shares are in a class, the rights attached to those Shares may only be varied if the rights attached to all shares in the class are varied in the same way.

*Variation, cancellation or modification without unanimous support of class*

**187.**—(1) If Members in a class do not all agree, whether by resolution or written consent to—

- (a) a variation or cancellation of their rights; or
- (b) a modification of the Company's Articles of Association to allow their rights to be varied or cancelled,

Members with at least 15% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.

(2) An application may only be made within 30 days after the variation, cancellation or modification is made.

(3) The variation, cancellation or modification takes effect—

- (a) if no application is made to the Court to have it set aside – 30 days after the variation, cancellation or modification is made; or
- (b) if an application is made to the Court to have it set aside – when the application is withdrawn or finally determined.

(4) The Members of the class who want to have the variation, cancellation or modification set aside may appoint one or more of the Members to make the application in writing on their behalf.

(5) The Court may—

- (a) set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants; or
- (b) confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.

(6) Within 14 days after the Court makes an order, the Company must lodge a copy of it with the Registrar.

*Variation, cancellation or modification with unanimous support of class*

**188.** If the Members in a class all agree, whether by resolution or by written consent, to the variation, cancellation or modification, it takes effect—

- (a) if no later date is specified in the resolution or consent – on the date of the resolution or consent; or
- (b) on a later date specified in the resolution or consent.

*Company must lodge documents and resolutions with the Registrar*

**189.—**(1) A Company must lodge with the Registrar a notice in the prescribed form setting out particulars of any of the following—

- (a) a division of shares in the Company into classes if the shares were not previously so divided;
- (b) a conversion of shares in a class of shares in the Company into shares in another class; and
- (c) each document including an agreement or consent, or resolution that does any of the following—
  - (i) attaches rights to issued or unissued shares;
  - (ii) varies or cancels rights attaching to issued or unissued shares; or
  - (iii) varies or cancels rights of Members in a class of Members of a Company that does not have a share capital or binds a class of Members.



(2) The notice must be lodged within 14 days after the resolution is passed or the document is fully executed.

#### *Division 4—Inspection of Books*

##### *Order for inspection of Books of Company or Managed Investment Scheme*

**190.**—(1) On application by a Member of a Company or Managed Investment Scheme, the Court may make an order authorising—

- (a) the applicant to inspect the Books of the Company or scheme; or
- (b) another person, whether a Member or not, to inspect the Books of the Company or scheme on the applicant's behalf.

(2) The Court may only make the order under subsection (1) if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.

(3) A person authorised to inspect the Books may make copies of the Books unless the Court orders otherwise.

(4) If the Court makes an order under subsection (1), the Court may make any other orders it considers appropriate, including an order limiting the use that a person who inspects the Books may make of information obtained during the inspection.

(5) A person who inspects Books on behalf of an applicant under subsection (1) must not disclose information obtained during the inspection other than to—

- (a) the Registrar; or
- (b) the applicant.

### PART 17—SHARE CAPITAL

#### *Division 1—Issuing and Converting Shares*

##### *Power to issue bonus, partly-paid, preference and redeemable preference Shares*

**191.**—(1) A Company's power under section 44 to issue shares includes the power to issue—

- (a) bonus shares (Shares for whose issue no consideration is payable to the issuing Company);
- (b) preference shares including redeemable preference shares; and
- (c) partly-paid shares whether or not on the same terms for the amount of calls to be paid or the time for paying calls.

(2) A Company can issue preference shares only if the rights attached to the preference shares with respect to the following matters are set out in the Company's Articles of Association or have been otherwise approved by Special Resolution of the Company—

- (a) repayment of capital;
- (b) participation in surplus assets and profits;

- (c) cumulative and non-cumulative dividends;
- (d) voting; and
- (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

*Terms of issue*

**192.** A Company may determine—

- (a) the terms on which its Shares are issued; and
- (b) the rights and restrictions attaching to the Shares.

*No Par Value*

**193.** Shares of a Company have no Par Value.

*Authorised Share Capital abolished*

**194.** A Company is not required to specify an Authorised Share Capital in its Articles of Association, application for registration or Financial Statements.

*No Bearer Shares or Share Warrants*

**195.** A Company does not have the power to issue—

- (a) Bearer Shares or Bearer Stock;
- (b) Share Warrants; or
- (c) stock or convert shares into stock.

*Share Premium Account and Capital Redemption Reserve Fund*

**196.** A Company does not have the power to establish or maintain—

- (a) a Share Premium Account; or
- (b) Capital Redemption Reserve Fund.

*Court validation of issue*

**197.—**(1) On application by a Company, a Member, a creditor or any other person whose interests have been or may be affected, the Court may make an order validating, or confirming the terms of, a purported issue of Shares if—

- (a) the issue is or may be invalid for any reason; or
- (b) the terms of the issue are inconsistent with or not authorised by—
  - (i) this Act; or
  - (ii) the Company's Articles of Association.

(2) On lodgement of a copy of the order with the Registrar using the prescribed form, the order has effect from the time of the purported issue.

*Conversion of Shares*

**198.**—(1) Subject to Division 3 of Part 16, a Company may convert—

- (a) an ordinary share into a preference share; and
- (b) a preference share into an ordinary Share.

(2) A Company can convert ordinary shares into preference shares only if the holders' rights with respect to the following matters are set out in the Company's Articles of Association or have been otherwise approved by Special Resolution of the Company—

- (a) repayment of capital;
- (b) participation in surplus assets and profits;
- (c) cumulative and non-cumulative dividends;
- (d) voting; or/and
- (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

(3) A share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

*Resolution to convert shares into larger or smaller number*

**199.**—(1) Subject to Division 3 of Part 16, a Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a General Meeting.

(2) The conversion takes effect on—

- (a) the day the resolution is passed; or
- (b) a later date specified in the resolution.

(3) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

(4) The Company must lodge a copy of the resolution with the Registrar using the prescribed form within 14 days after it is passed.

*Presumption of joint tenancy*

**200.** Where two or more persons hold shares in a Company jointly, they shall, for the purposes of this Act, be treated as a single Member holding the shares jointly.

*Division 2—Partly-paid Shares**Liability on partly-paid Shares*

**201.** If Shares in a Company are partly-paid, the Member is liable to pay calls on the shares in accordance with the terms on which the shares are issued.

*Division 3—Redemption of Redeemable Preference Shares**Redemption must be in accordance with terms of issue*

**202.**—(1) A Company may redeem redeemable preference shares only on the terms on which they are issued and upon redemption, the shares are cancelled.

(2) This section does not affect the terms on which redeemable preference shares may be cancelled under a reduction of capital or a Buy-back under Part 18.

*Other requirements about redemption*

**203.** A Company may only redeem redeemable preference shares—

- (a) if the Shares are fully paid-up; and
- (b) out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

*Consequences of contravening section 202 or 203*

**204.**—(1) If a Company redeems shares in contravention of section 202 or 203—

- (a) the contravention does not affect the validity of the redemption or of any contract or transaction connected with it; and
- (b) the Company shall not be guilty of an offence.

(2) Any person who is involved in a Company's contravention of section 202 or 203 contravenes this subsection.

(3) A person is involved in a Company's contravention of section 202 or 203 if, and only if, the person—

- (a) has aided, abetted, counselled or procured the contravention;
- (b) has induced, whether by threats or promises or otherwise, the contravention;
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

*Solvency test*

**205.** A person who is a Director of a Company at a time at which it redeems redeemable preference shares, must ensure that immediately after the redemption of the redeemable preference shares, the Company is solvent.

*Division 4—Capitalisation of Profits**Capitalisation of profits*

**206.** A Company may capitalise profits and the capitalisation need not be accompanied by the issue of Shares.

*Division 5—Dividends**Dividends to be paid out of profits*

**207.**—(1) A dividend may only be paid out of profits of the Company and may only be paid if the Company is solvent.

(2) A Company Limited by Guarantee must not pay a dividend regardless of whether the Company has profits.

*When does the Company incur a debt?*

**208.**—(1) A Company does not incur a debt merely by fixing the amount or time for payment of a dividend but only when the time fixed for payment arrives and the decision to pay the dividend may be revoked at any time before then.

(2) However, if the Company's Articles of Association provide for the declaration of dividends, the Company incurs a debt when the dividend is declared.

*Dividend rights*

**209.** Each share in a class of shares in a Public Company shall have the same dividend rights unless—

- (a) the Company's Articles of Association provide for the shares to have different dividend rights; or
- (b) different dividend rights are provided for by Special Resolution of the Company.

*Solvency test*

**210.** A person who is a Director of a Company—

- (a) at a time at which it pays a dividend; or
- (b) if under the Company's Articles of Association the Directors of the Company are permitted to declare a dividend, at the time at which it declares a dividend,

must ensure that immediately after the payment or declaration of the dividend, the Company is solvent.

*Division 6—Notice Requirements**Notice to the Registrar of share issue*

**211.**—(1) Within 28 days after issuing shares, a Company must lodge with the Registrar a notice in the prescribed form that sets out—

- (a) the number of shares that were issued;
- (b) if the Company has different classes of shares – the Class to which each of those shares belongs;
- (c) the amount, if any paid, or agreed to be considered as paid, on each of those shares;

- (d) the amount unpaid, if any on each of those shares; and
- (e) if the Company is a Public Company and the shares were issued for non-cash consideration, the prescribed particulars about the issue of the shares, unless the shares were issued under a written contract and a copy of the contract is lodged with the notice.

(2) If the shares were issued for non-cash consideration under a contract, the Company must also lodge with the Registrar a certificate in the prescribed form stating that all stamp duty payable on the contract under any applicable law relating to stamp duty has been paid.

(3) The certificate under subsection (2) must be lodged with the notice under subsection (1).

(4) The Company does not have to lodge a notice under subsection (1) about the issue of shares to a person on the registration of the Company or on the Company changing its type from a Company Limited by Guarantee to a Company Limited by Shares.

*Notice to the Registrar of Share cancellation*

**212.** Within 28 days after shares are cancelled, the Company must lodge with the Registrar a notice in the prescribed form that sets out—

- (a) the number of shares cancelled;
- (b) any amount paid by the Company (in cash or otherwise) on the cancellation of the shares;
- (c) if the shares are cancelled following a Buy-back – the amount paid by the Company (in cash or otherwise) on the Buy-back; and
- (d) if the Company has different classes of Shares – the class to which each cancelled share belonged.

*Notice to Registrar of substantial interest*

**213.—**(1) Unless exempted by the Registrar in writing, a person must provide the information referred to in subsection (4) in the prescribed form if—

- (a) the person begins to have or ceases to have a substantial interest in a Listed Company or Listed Managed Investment Scheme;
- (b) the person has a substantial interest in a Listed Company or Listed Managed Investment Scheme and there is a movement in their interest equivalent to at least 1% of the total number of voting shares in the Company or voting interests in a Listed Managed Investment Scheme; or
- (c) the person makes an offer under a Registered Bidder's Statement.

(2) For the purposes of this section, there is a “movement of at least 1%” in a person’s holding if the percentage worked out using the following formula increases or decreases by 1 or more percentage points from the percentage they last disclosed under this Part in relation to the company or scheme—

$$\frac{\text{Person's and Related Body Corporates' votes}}{\text{Total votes in Company or Managed Investment Scheme}} \times 100$$

where—

“Person’s and Related Body Corporates’ votes” is the total number of votes attached to all the voting Shares in the Company or Interests in the Managed Investment Scheme (if any) that the person or a Related Body Corporate has a Relevant Interest in.

“total votes in Company or Managed Investment Scheme” is the total number of votes attached to all voting Shares in the Company or Interests in the Management Investment Scheme.

(3) A person to whom subsection (1) applies must provide the information referred to in subsection (4) within 3 working days after the person becomes aware of the information to—

- (a) the Listed Company or Manager of a Listed Managed Investment Scheme;
- (b) the Registrar;
- (c) the Reserve Bank; and
- (d) the relevant Securities Exchange.

(4) The following information must be provided in the prescribed form for the purposes of subsections (1) and (2)—

- (a) the person’s name and address;
- (b) details of his or her interest in the voting shares in the Company or voting interests in the Managed Investment Scheme;
- (c) details of any agreement through which he or she has an interest in voting shares in the Company or voting interests in the Managed Investment Scheme;
- (d) the name of each Related Body Corporate which has an interest in voting shares in the Company or voting interests in the Managed Investment Scheme, together with details of the nature of their relationship, the interest of the Related Body Corporate in voting shares in the Company or voting interests in the Managed Investment Scheme and any agreement through which the Related Body Corporate has the interest in voting shares in the Company or voting interests in the Managed Investment Scheme;

- (e) if the information is being provided because of a movement in their interest, the size and date of that movement;
- (f) if the information is being provided because a person has ceased to be a Related Body Corporate, the name of the Related Body Corporate; and
- (g) any other particulars prescribed pursuant to regulations made under this Act.

## PART 18—TRANSACTIONS AFFECTING SHARE CAPITAL

### *Division 1—Share Capital Reductions and Share Buy-backs*

#### *Purpose*

**214.**—(1) This Part states the rules to be followed by a Company for reductions in share capital and for Buy-backs.

- (2) The rules are designed to protect the interests of Members and creditors by—
  - (a) addressing the risk of these transactions leading to the Company's insolvency;
  - (b) seeking to ensure fairness between the Company's Members; and
  - (c) requiring the Company to disclose all material information.

#### *Solvency test*

**215.** A person who is a Director of a Company at a time at which it reduces its share capital or buys back its own shares must ensure that immediately after the reduction in share capital or buy-back of its own shares, the Company is solvent.

### *Division 2—Share Capital Reductions*

#### *Unlimited Liability Companies*

**216.** An Unlimited Liability Company may reduce its share capital in any way provided the reduction is approved by resolution at a General Meeting.

#### *Company may make reduction not otherwise authorised*

**217.**—(1) A Company may reduce its share capital in a way that is not otherwise authorised under the Company's Articles of Association or under this Act if the reduction—

- (a) is fair and reasonable to the Company's Members as a whole;
- (b) does not materially prejudice the Company's ability to pay its creditors;
- (c) the Company will remain solvent immediately after the reduction in share capital; and
- (d) is approved by Members under section 218.

(2) A cancellation of a share for no consideration is a reduction of share capital, but subsection (1)(b) does not apply to this kind of reduction.



- (3) To avoid doubt, a cancellation of a partly paid share is taken to be for consideration.
- (4) The reduction is either an equal reduction or a selective reduction.
- (5) The reduction is an “equal reduction” if—
  - (a) it relates only to ordinary shares;
  - (b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
  - (c) the terms of the reduction are the same for each holder of ordinary shares.
- (6) Otherwise, the reduction is a “selective reduction”.
- (7) In applying subsection (5) the differences in the terms of the reduction that are—
  - (a) attributable to the fact that shares have different accrued dividend entitlements;
  - (b) attributable to the fact that shares have different amounts unpaid on them; or
  - (c) introduced solely to ensure that each Member is left with a whole number of Shares,shall be ignored.

*Member approval*

**218.**—(1) If the reduction is an equal reduction, it must be approved by a resolution passed at a General Meeting of the Company.

- (2) If the reduction is a selective reduction, it must be approved by either—
  - (a) a Special Resolution passed at a General Meeting of the Company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their Related Bodies Corporate; or
  - (b) a resolution agreed to, at a General Meeting, by all ordinary Members.
- (3) If the reduction involves the cancellation of shares, the reduction must also be approved by a Special Resolution passed at a meeting of the Members whose shares are to be cancelled.
- (4) The Company must lodge with the Registrar a copy of any resolution under subsection (2) using the prescribed form within 14 days after it is passed and the Company must not make the reduction until 14 days after lodgement.
- (5) The Company must include with the notice of the meeting a statement setting out all information known to the Company that is material to the decision on how to vote on the resolution.

(6) However, the Company does not have to disclose information if it would be unreasonable to require the Company to do so because the Company had previously disclosed the information to its Members.

(7) Before the notice of the meeting is sent to Members, the Company must, using the prescribed form, lodge with the Registrar a copy of—

- (a) the notice of the meeting; and
- (b) any document relating to the reduction that will accompany the notice of the meeting sent to Members.

*Consequences of failing to comply with section 216 or 217*

**219.**—(1) The Company must not make the reduction unless it complies with section 216 or 217.

(2) If the Company contravenes section 216 or 217—

- (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
- (b) the Company is not guilty of an offence.

(3) Any person who is involved in a Company's contravention of the sections stated under subsection (2), contravenes this subsection and commits an offence if their involvement is dishonest.

*Division 3—Share Buy-backs*

*The Company's power to buy back its own shares*

**220.**—(1) A Company may buy back its own shares if—

- (a) the Buy-back does not materially prejudice the Company's ability to pay its creditors;
- (b) the Company will remain solvent immediately after the Buy-back of its own shares; and
- (c) the Company follows the procedures laid down in this Division.

(2) The Company's Articles of Association may include provisions that preclude the Company buying back its own shares or impose restrictions on the exercise of the Company's power to buy back its own shares.

*Buy-back procedure – general*

**221.**—(1) An Equal Buy-back is a Buy-back that satisfies all the following conditions—

- (a) the offers under the scheme relate only to ordinary shares;
- (b) the offers are to be made to every person who holds ordinary Shares to buy back the same percentage of their ordinary shares;

- (c) all of those persons have a reasonable opportunity to accept the offers made to them;
  - (d) Buy-back Agreements are not entered into until a specified time for acceptances of offers has closed; and
  - (e) the terms of all the offers are the same.
- (2) In applying subsection (1), ignore—
- (a) differences in consideration attributable to the fact that the offers relate to shares having different accrued dividend entitlements;
  - (b) differences in consideration attributable to the fact that the offers relate to shares on which different amounts remain unpaid; and
  - (c) differences in the offers introduced solely to ensure that each Member is left with a whole number of shares.

*Buy-back procedure – Member approval*

**222.**—(1) The terms of a Buy-back under an Equal Buy-back Agreement must be approved before it is entered into by a resolution passed at a General Meeting of the Company, or the agreement must be conditional on such an approval.

(2) The terms of a Buy-back under a Selective Buy-back Agreement must be approved before it is entered into by either—

- (a) a Special Resolution passed at a General Meeting of the Company, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or a Related Body Corporate; or
- (b) a resolution agreed to, at a General Meeting, by all ordinary Members,

or the agreement must be conditional on such an approval.

(3) The Company must include with the notice of the meeting a statement setting out all information known to the Company that is material to the decision on how to vote on the resolution.

(4) However, the Company does not have to disclose information if it would be unreasonable to require the Company to do so because the Company had previously disclosed the information to its Members.

(5) Before the notice of the meeting is sent to Members, the Company must, using the prescribed form, lodge with the Registrar a copy of—

- (a) the notice of the meeting; and
- (b) any document relating to the Buy-Back that will accompany the notice of the meeting sent to Members.

(6) The Company must lodge, using the prescribed form, with the Registrar a copy of any resolution under subsection (1) or (2) within 14 days after it is passed and where the resolution approves the entering into of the Buy-back Agreement, the Company must not enter into the agreement until 14 days after the resolution is passed and where the resolution satisfies a condition in a Buy-back Agreement previously entered into, the Company must not complete the Buy-back until the day after the resolution is passed.

*Acceptance of offer and transfer of shares to the Company*

**223.**—(1) Once a Company has entered into an agreement to Buy-back Shares, all rights attaching to the shares are suspended and such suspension is lifted if the agreement is terminated.

(2) A Company must not dispose of shares it buys back and any agreement entered into in contravention of this subsection is void.

(3) Immediately after the registration of the transfer to the Company of the shares bought back, the Shares are cancelled.

(4) Notice of the cancellation of the shares under this section must be given to the Registrar in the prescribed form within 28 days after the cancellation of the shares.

*Division 4—Other Share Capital Reductions*

*Brokerage or commission*

**224.** A Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.

*Cancellation of forfeited Shares*

**225.** A Company may, by resolution passed at a General Meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.

*Other share cancellations*

**226.** Any reduction in share capital involved in—

- (a) the redemption of redeemable preference shares out of the proceeds of a new issue of shares made for the purpose of the redemption; or
- (b) a Company's buying back of its own shares under sections 220 to 223 if the shares are paid for out of share capital,

is authorised by this section.

*Division 5—Self-Acquisition and Control of Shares*

*Directly acquiring own shares*

**227.** A Company must not acquire shares in itself except—

- (a) in buying-back shares under section 220;
- (b) under a Court order; or
- (c) in circumstances covered by section 228(2) or (3).

*Taking security over own shares or shares in Holding Company*

**228.**—(1) A Company must not take security over Shares in itself or in a Company that Controls it, except as permitted by subsections (2) and (3).

(2) A Company may take security over shares in itself under an Employee Share Scheme that has been approved by—

- (a) a resolution passed at a General Meeting of the Company;
- (b) if the Company is a Subsidiary of a Listed Company – a resolution passed at a General Meeting of the Listed Company; and
- (c) if paragraph (b) does not apply but the Company has a Holding Company that is a Company and that is not itself a Subsidiary of a Company – a resolution passed at a General Meeting of that Holding Company.

(3) A Company's taking security over Shares in itself or in a Company that Controls it is exempted from subsection (1) if—

- (a) the Company's ordinary business includes providing finance; and
- (b) the security is taken in the ordinary course of that business and on ordinary commercial terms.

(4) If a Company acquires shares in itself because it exercises rights under a security permitted by subsection (2) or (3), then, within the following 12 months, the Company must cease to hold those shares or units of Shares and upon application by the Company before the end of the period, the Registrar may extend this period of 12 months.

(5) Any voting rights attached to the shares cannot be exercised while the Company continues to hold them.

(6) If, at the end of the 12 months or extended period, the Company still holds any of the shares, the Company commits an offence for each day while that situation continues.

(7) This section shall not prevent a Subsidiary which was, immediately before 1 January, 1984, a Member of its Holding Company from continuing to be a Member but, the Subsidiary shall have no right to vote at meetings of the Holding Company or any class of Members of the Holding Company.

*Issuing or transferring shares to controlled entity*

**229.**—(1) The issue or transfer of shares of a Company to an entity it Controls is void unless—

- (a) the issue or transfer is to the entity as a personal representative; or
- (b) the issue or transfer is to the entity as trustee and neither the Company nor any entity it Controls has a beneficial interest in the trust.

(2) The Registrar may exempt a Company in writing and subject to such conditions the Registrar deems appropriate, from the operation of this section.

*Company controlling entity that holds shares in it*

**230.**—(1) If a Company obtains Control of an entity that holds shares in the Company, then, within 12 months after it occurs either the—

- (a) entity must cease to hold the shares; or
- (b) Company must cease to Control the entity.

(2) The Registrar may extend the period of 12 months under subsection (1) if the Company applies for the extension before the end of the period.

(3) Any voting rights attached to the shares cannot be exercised while the Company continues to control the entity.

(4) If, at the end of the 12 months or the extended period, the Company still controls the entity and the entity still holds the shares, the Company commits an offence for each day while that situation continues.

(5) This section does not apply to shares if—

- (a) they are held by the entity as a personal representative;
- (b) they are held by the entity as trustee and neither the Company nor any entity it Controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions—
  - (i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing finance; and
  - (ii) that transaction was not entered into with a Related Body Corporate of the Company or an entity it controls.

(6) A contravention of this section does not affect the validity of any transaction.

*Consequences of failing to comply with section 227 or 228*

**231.**—(1) If a Company contravenes section 227 or 228—

- (a) the contravention does not affect the validity of the acquisition or security or of any contract or transaction connected with it; and
- (b) the Company is not guilty of an offence.

(2) Any person who is involved in a Company's contravention of section 227 or 228 contravenes this subsection and commits an offence if the involvement is dishonest.

### *Division 6—Financial Assistance*

*Financial assistance by a Company for acquiring shares in the Company or a Holding Company*

**232.** A Company may not provide financial assistance to a person to acquire shares in the Company or a Holding Company of the Company unless permitted by this Division.

*Member approval*

**233.**—(1) Financial assistance may be given to a person to acquire shares in a Company if Member approval for financial assistance by a Company is given by a resolution passed at a General Meeting of the Company, with no votes being cast in favour of the resolution by the person acquiring the Shares or units of Shares or by a Related Body Corporate.

(2) If the Company is a Subsidiary of a Listed Company immediately after the acquisition referred to in section 232 occurs, the financial assistance must also be approved by Special Resolution passed at a General Meeting of that Company.

(3) If, immediately after the acquisition, the Company will have a Holding Company that—

(a) is a Company but not Listed; and

(b) is not itself a Subsidiary of a Company,

the financial assistance must also be approved by a Special Resolution passed at a General Meeting of the Company that will be the Holding Company.

(4) A Company or other body that calls a meeting for the purpose of subsection (1), (2) or (3) must include with the notice of the meeting a statement setting out all the information known to the Company or body that is material to the decision on how to vote on the resolution.

(5) However, the Company or body does not have to disclose information if it would be unreasonable to require the Company or body to do so because the Company or body had previously disclosed the information to its Members.

(6) Before the notice of a meeting for the purpose of subsection (1), (2) or (3) is sent to Members of a Company and at least 14 days before giving the financial assistance, the Company must lodge, using the prescribed form, with the Registrar a copy of—

(a) the notice of the meeting; and

(b) any documents relating to the financial assistance that will accompany the notice of the meeting sent to the Members.

(7) A resolution passed for the purpose of subsection (1), (2) or (3) must be lodged with the Registrar, using the prescribed form, by the Company, Listed Company or Holding Company within 14 days after it is passed.

*Exempted financial assistance*

**234.**—(1) Financial assistance is exempted from section 232 if it is given in the ordinary course of commercial dealing and consists of—

(a) acquiring or creating a lien on partly paid shares in the Company for amounts payable to the Company on the shares; or

(b) entering into an agreement with a person under which the person may make payments to the Company on shares by instalments.

(2) Financial assistance is exempted from section 232 if—

- (a) the Company's ordinary business includes providing finance; and
- (b) the financial assistance is given in the ordinary course of that business and on ordinary commercial terms.

(3) Financial assistance is exempted from section 232 if it is given under an Employee Share Scheme that has been approved by—

- (a) a resolution passed at a General Meeting of the Company;
- (b) if the Company is a Subsidiary of a Listed Company—a resolution passed at a General Meeting of the Listed Company; and
- (c) if paragraph (b) does not apply but the Company has a Holding Company that is a Company and that is not itself a Subsidiary of a Company – a resolution passed at a General Meeting of that Holding Company.

(4) The following types of financial assistance are exempted from section 232—

- (a) a reduction of share capital in accordance with Part 18;
- (b) a Buy-back in accordance with Part 18;
- (c) assistance given under a Court order; and
- (d) a discharge on ordinary commercial terms of a liability that the Company incurred as a result of a transaction entered into on ordinary commercial terms.

*Consequences of failing to comply with section 232*

**235.**—(1) If a Company provides financial assistance in contravention of section 232—

- (a) the contravention does not affect the validity of the financial assistance or of any contract or transaction connected with it; and
- (b) the Company shall not be guilty of an offence.

(2) Any person who is involved in a Company's contravention of section 232 contravenes this subsection and commits an offence if the involvement is dishonest.

*General duties still apply*

**236.** A Director is not relieved from any of their duties under this Act, or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Part or is approved by a resolution of Members under a provision of this Division.



## PART 19—TITLE TO SHARES AND OTHER INTERESTS

*Nature of shares and certain other interests in a Company or Managed Investment Scheme*

**237.**—(1) A Share, other interest of a Member in a Company or interest of a person in a Managed Investment Scheme—

- (a) is personal property;
- (b) is transferable or transmissible in accordance with the Company's Articles of Association or the Scheme Deed of a Managed Investment Scheme; and
- (c) is capable of devolution by will or by operation of law.

(2) Subject to subsection (1)—

- (a) the laws applicable to ownership of, and dealing with, personal property apply to a Share, other interest of a Member in a Company or interest of a person in a Managed Investment Scheme as they apply to other property; and
- (b) equitable interests in respect of a Share, interest of a Member in a Company or other interest of a person in a Managed Investment Scheme may be created, dealt with and enforced as in the case of other personal property.

*Numbering of shares*

**238.**—(1) Except as provided in subsections (2) and (3), a Company shall ensure that each share in the Company is distinguished by an appropriate number.

(2) Notwithstanding subsection (1)—

- (a) if at any time all the issued shares in a Company, or all the issued shares in a Company of a particular class—
  - (i) are fully paid up; and
  - (ii) rank equally for all purposes,

none of those shares is required to have a distinguishing number so long as each of those shares remain fully paid up, and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; and

(b) if—

- (i) all the issued shares in a Company are evidenced by certificates in accordance with subsection (3);
- (ii) each certificate is distinguished by an appropriate number; and
- (iii) that number is recorded in the register of Members,

none of those shares is required to have a distinguishing number.

(3) Notwithstanding subsection (1), if at any time all the issued shares in a Company, or all the issued shares in a Company of a particular Class are listed on a Securities Exchange which has a Central Depository or an electronic trading platform which allows for the settlement of Listed Securities transactions or dealings in Listed Securities without the physical delivery of scrips, none of those shares shall be required to have a distinguishing number.

*Matters to be specified in share certificate*

**239.**—(1) A Company must ensure that a certificate it issues specifying the shares held by a Member of the Company, states—

- (a) the name of the Company and the fact that it is registered under this Act;
- (b) the class of the shares; and
- (c) the amount if any, unpaid on the shares.

(2) A certificate issued in accordance with subsection (1) specifying shares held by a Member of a Company is *prima facie* evidence of the title of the Member to the Shares.

(3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.

(4) If at any time all the issued shares in a Company, or all the issued shares in a Company of a particular class are Listed on a Securities Exchange which has a Central Depository or an electronic trading platform which allows for the settlement of Listed Securities transactions or dealings in Listed Securities without the physical delivery of scrips, the Company is not required to issue a Share certificate in respect of any of those Shares.

*Loss or destruction of title documents*

**240.**—(1) This section applies to—

- (a) shares in a Company;
- (b) Debentures of a Company; and
- (c) interests in a Managed Investment Scheme (“Specified Securities”).

(2) This section applies to an Interest in a Managed Investment Scheme as if—

- (a) references to a Company were instead references to the Manager of the Managed Investment Scheme;
- (b) references to the Articles of Association of a Company were instead references to the Articles of Association of the Manager of a Managed Investment Scheme;
- (c) references to Members of a Company were instead references to Members of the Managed Investment Scheme; and
- (d) references to the Directors of a Company were instead references to the Directors of the Manager of the Managed Investment Scheme.

- (3) Unless section 239(4) applies, a Company must, in accordance with subsection (4), issue a duplicate certificate or other title document for specified Securities if—
- (a) the certificate or document is lost or destroyed; and
  - (b) the owner of the specified Securities applies to the Company for the duplicate in accordance with subsection (5).
- (4) The Company must issue the duplicate—
- (a) if the Company requires the payment of an amount not exceeding the prescribed amount – within 21 days after the payment is received by the Company or within such longer period as the Registrar approves; or
  - (b) in a case to which paragraph (a) does not apply – within 21 days after the application is made or within such longer period as the Registrar approves.
- (5) The application must be accompanied by—
- (a) a statement in writing that the certificate or other document—
    - (i) has been lost or destroyed; and
    - (ii) has not been pledged, sold or otherwise disposed of;
  - (b) if the certificate or other document has been lost – a statement in writing that proper searches have been made; and
  - (c) an undertaking in writing that if the certificate or other document is found or received by the owner it will be returned to the Company.

## PART 20—TRANSFER OF SHARES AND OTHER INTERESTS

### *Application of this Part*

**241.**—(1) This Part applies to—

- (a) shares in a Company;
  - (b) Debentures of a Company; and
  - (c) interests in a Managed Investment Scheme (“Specified Securities”).
- (2) This section applies to an Interest in a Managed Investment Scheme as if—
- (a) references to a Company were instead references to the Manager of the Managed Investment Scheme;
  - (b) references to the Articles of Association of a Company were instead references to the Articles of Association of the Manager of a Managed Investment Scheme;
  - (c) references to Members of a Company were instead references to Members of the Managed Investment Scheme; and
  - (d) references to the Directors of a Company were instead references to the Directors of the Manager of the Managed Investment Scheme.

*Instrument of transfer***242.**—(1) Notwithstanding—

- (a) anything in its Articles of Association; or
- (b) anything in a deed relating to Debentures,

subject to subsection (3) a Company shall only register a transfer of Specified Securities if a proper instrument of transfer has been delivered to the Company.

(2) An instrument of transfer is not a proper instrument of transfer for the purposes of subsection (1) if it does not show the details, specified in regulations made under this Act, in relation to the Company concerned.

(3) Subsection (1) does not prejudice the power of the Company to register, as the holder of Specified Securities, a person to whom the right to the Specified Securities has devolved by will or by operation of law.

(4) An instrument of transfer will be deemed to be properly executed by the transferor or transferee where it is executed by the holder of a Securities Industry Licence on behalf of the transferor or transferee, provided the same holder of a Securities Industry Licence does not execute the instrument of transfer on behalf of both the transferor and transferee.

(5) Subsections (6) to (12) deal with a transfer of a Specified Security of a deceased holder by the deceased holder's personal representative and they deal with the transfer differently depending on whether the personal representative is a local representative or not.

(6) The personal representative is a local representative if the representative is duly constituted as a personal representative under the laws of Fiji.

(7) If the personal representative is a local representative, a transfer of the Specified Security by the representative is as valid as if the representative had been registered as the holder of the Specified Security at the time when the instrument of transfer was executed.

(8) If—

- (a) the personal representative is not a local representative;
- (b) the representative—
  - (i) executes an instrument of transfer of the Specified Security to the representative or to another person;
  - (ii) delivers the instrument to the Company; and
  - (iii) delivers to the Company with the instrument a statement in writing made by the representative to the effect that, to the best of the representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in Fiji and no application for such a grant will be made; and

- (c) the statement is made within 3 months immediately before the date on which the statement is delivered to the Company,

the Company must, subject to subsection (9), register the transfer and pay to the representative any dividends or other money accrued in respect of the Specified Security up to the time when the instrument was executed.

(9) Subsection (8) does not operate so as to require the Company to do anything that it would not have been required to do if the personal representative were a local representative.

(10) A transfer or payment made under subsection (8) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were a local representative.

(11) For the purposes of this section, an application by a personal representative of a dead person for registration as the holder of a security in place of the dead person is taken to be an instrument of transfer effecting a transfer of the security to the personal representative.

(12) Notwithstanding—

- (a) anything in its Articles of Association; or
- (b) in a deed relating to Debentures,

the production to a Company of a document that is, under the laws of Fiji, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person, is sufficient evidence of the grant for the purposes of the Company.

*Occupation need not appear in transfer document, register etc.*

**243.—**(1) A document transferring Specified Securities need not state the occupation of the transferor or transferee and, if it is signed by a person, the signature need not be witnessed.

(2) The omission from a register, certificate, document transferring Specified Securities or other document relating to a security, of a statement of the occupation of a person who is, or is entitled to be, registered as the holder of the security does not breach any law, Articles of Association, trust deed or other document relating to the Specified Securities.

*Registration of transfer at request of transferor*

**244.—**(1) A written application by the transferor of a Specified Security of a Company for the transferee's name to be entered in the appropriate register is as effective, for the purposes of the Company, as if it were an application by the transferee.

(2) An application under subsection (1) is subject to the same conditions as it would be if it had been made by the transferee.

(3) If the transferor of a Specified Security of a Company requests the Company in writing to do so, the Company must, by written notice, require a person who has possession, custody or control of either or both of the following—

- (a) any title documents for the Specified Security;
- (b) the instrument of transfer of the Specified Security,

to bring it or deliver them to the Registered Office of the Company within a specified period being not less than 7 days and not more than 28 days after the date of the notice, to have the document cancelled or rectified and the transfer registered or otherwise dealt with.

(4) If a person refuses or fails to comply with a notice given under subsection (3), the transferor may apply to the Court for the issue of a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(5) The Court may—

- (a) if the person appears,—
  - (i) examine the person upon oath or affirmation; and
  - (ii) receive other evidence;
- (b) if the person does not appear after being duly served with the summons – receive evidence in the person’s absence; and
- (c) in either case order the person to deliver up such documents to the Company upon such terms or conditions as the Court considers just and reasonable.

(6) The costs of the summons and of proceedings on the summons are at the discretion of the Court.

(7) Lists of documents required to be brought in under subsection (3) but not brought in accordance with a requirement made under subsection (3) or delivered up in accordance with an order under subsection (4) must be—

- (a) exhibited in the office of the Company; and
- (b) advertised in the *Gazette* and in such newspapers and at such times as the Company thinks fit.

*Notice of refusal to register transfer*

**245.** If a Company refuses to register a transfer of a Specified Security of the Company, it must, within 60 days after the date on which the transfer was lodged with it, give the transferee notice of the refusal.

*Remedy for refusal to register transfer or transmission*

**246.—**(1) If a person—

- (a) refuses or fails to register; or

(b) refuses or fails to give his or her consent or approval to the registration of a transfer or transmission of Specified Securities of the Company,  
the transferee or transmittee may apply to the Court for an order under this section.

(2) If the Court is satisfied on the application that the refusal or failure was without just cause, the Court may—

- (a) order that the transfer or transmission be registered; or
- (b) make such other order as it thinks just and reasonable, including but not limited to—
  - (i) in the case of a transfer or transmission of shares – an order providing for the purchase of the shares by a specified Member of the Company or by the Company; and
  - (ii) in the case of a purchase by the Company – an order providing for the reduction accordingly of the capital of the Company.

*Certification of transfers*

**247.**—(1) The certification by a Company of an instrument of transfer of Specified Securities of the Company—

- (a) is taken as a representation by the Company to any person acting on the faith of the certification that there have been produced to the Company such documents as on the face of them show *prima facie* title to the Specified Securities in the transferor named in the instrument of transfer; and
- (b) is not taken as a representation that the transferor has any title to the Specified Securities.

(2) If a person acts on the faith of a false certification by a Company made negligently, the Company is under the same liability to the person as if the certification had been made fraudulently.

(3) A certification may be expressed to be limited to 42 days or any longer period from the date of certification and the Company and its Officers and employees are not, in the absence of fraud, liable in respect of the registration of any transfer of Specified Securities comprised in the certification after the end of—

- (a) the period so limited; or
- (b) any extension of that period given by the Company,

if the instrument of transfer has not, within that period, been lodged with the Company for registration.

(4) For the purposes of this section—

- (a) an instrument of transfer shall be taken to be certified if it bears the words “certificate lodged” or words to the like effect;

- (b) the certification of an instrument of transfer is taken 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 certification is signed by a person authorised to certify transfers on the Company's behalf or by an Officer of the Company or of a Company so authorised; and
- (c) a certification that purports to be authenticated by a person's signature or initials whether handwritten or not, is taken to be signed by the person unless it is shown that the signature or initials was not or were not placed there by—
  - (i) the person; and
  - (ii) any other person authorised to use the signature or initials,

for the purpose of certifying transfers on the Company's behalf.

*Duties of Company with respect to issue of certificates*

**248.**—(1) Within 28 days after a Company, other than a Listed Company, issues a Specified Security, the Company must—

- (a) subject to the conditions on which the Shares are issued, complete and have ready for delivery to the holder of the Specified Security and the transferee all the appropriate certificates or other title documents in connection with the issue of the Specified Security; and
- (b) unless otherwise instructed by the holder or the transferee, send or deliver the completed certificates or other title documents to—
  - (i) the holder or the transferee, as applicable; or
  - (ii) if the holder or the transferee has instructed the Company in writing to send them to a nominated person – that person.

(2) The Court may make an order directing the Company and any Officer or employee of the Company to remedy the contravention within such period as is specified in the order if—

- (a) subsection (1) applies;
- (b) the Company fails to remedy the contravention within 10 days after the service of the notice; and
- (c) the person entitled to have the documents delivered to him or her applies to the Court for an order under this subsection.



(3) An order under subsection (2) may provide that all costs of, and incidental to, the application are to be borne by—

- (a) the Company; or
- (b) any Officer or employee of the Company who was involved in the contravention,

in such proportions as the Court thinks just and reasonable.

## PART 21—SPECIAL PROVISIONS FOR THE TRANSFER OF SHARES

### *Rights of trustee of estate of bankrupt Member*

**249.—**(1) If—

- (a) because of the Bankruptcy Act (Cap. 48), a share in a Company, being part of the property of a bankrupt, vests in the trustee of the bankrupt's estate; and
- (b) the bankrupt is the registered holder of that share,

this section applies whether or not the trustee has been registered as the holder of the shares.

(2) On producing such information as the Directors of the Company properly require, the trustee is entitled to—

- (a) the same dividends and other benefits; and
- (b) the same rights, for example, but without limitation, rights in relation to—
  - (i) meetings of the Company;
  - (ii) documents, including notices of such meetings;
  - (iii) voting; or
  - (iv) inspection of the Company's records,

as the bankrupt would be entitled to if he or she were not a bankrupt.

(3) The trustee has the same rights to—

- (a) transfer the share; and
- (b) require a person to do an act or give a consent in connection with completing or registering a transfer of the Share,

as the bankrupt would have if he or she were not a bankrupt.

(4) If the trustee transfers the share, the transfer is as valid as if the trustee had been registered as the holder of the share when the trustee executed the instrument of transfer.

(5) A person or body whose consent or approval is required for the transfer of shares in the Company must not unreasonably withhold consent or approval for the transfer of the shares by the trustee.

(6) If—

- (a) the Company’s Articles of Association require—
  - (i) the share to be offered for purchase to a Member of the Company; or
  - (ii) an invitation to buy the shares to be issued to such a Member; and
- (b) as at the end of a reasonable period after the trustee so offers the shares, or so issues such an invitation, no such Member has agreed to buy the shares from the trustee at a reasonable price,

the trustee may sell and transfer the shares to a person other than such a Member.

(7) A provision of the Company’s Articles of Association is void as against the trustee in so far as, apart from this section, it would affect rights attached to the share—

- (a) because the bankrupt is a bankrupt;
- (b) because of some event that led to the bankrupt becoming, or that indicated that the bankrupt was about to become, or might be about to become, a bankrupt; or
- (c) for reasons including a reason referred to in paragraph (a) or (b).

(8) Nothing in this section limits the generality of anything else in it.

(9) This section shall have effect notwithstanding anything contained in the Company’s Articles of Association.

*Trustee etc. may be registered as owner of shares*

**250.**—(1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of shares may be registered as the holder of the Shares as trustee, executor or administrator of that estate.

(2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to shares may, with the consent of—

- (a) the Company; and
- (b) the registered holder of the shares,

be registered as the holder of the shares as trustee, executor or administrator of that estate.

(3) If—

- (a) a person (the “administrator”) is appointed, under the laws of Fiji relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is the registered holder of shares,

the administrator may be registered as the holder of those shares as administrator of that estate.

(4) If—

- (a) a person (the “administrator”) is appointed, under the laws of Fiji relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is entitled in equity to the shares,

the administrator may, with the consent of the Company and of the registered holder of those shares, be registered as the holder of the share as administrator of that estate.

(5) If—

- (a) by virtue of the Bankruptcy Act (Cap. 48), shares, being the Property of a bankrupt, vest in the trustee in bankruptcy; and
- (b) the bankrupt is the registered holder of those shares,

the trustee may be registered as the holder of that Share.

(6) A person registered under subsections (1), (2), (3), (4) or (5) is, while registered as mentioned in that subsection—

- (a) subject to the same liabilities in respect of the share as those to which he, she or it would have been subject if the shares had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and
- (b) subject to no other liabilities in respect of the shares.

(7) Shares registered in a register and held by a trustee in respect of a particular trust may, with the consent of the Company, be marked in the register in such a way as to identify them as being held in respect of the trust.

(8) Except as provided in this section and section 82—

- (a) no notice of a trust, whether express, implied or constructive, must be entered on a register kept in Fiji or be receivable by the Registrar;
- (b) no liabilities are affected by anything done under a preceding subsection of this section or under section 82; and
- (c) nothing so done affects the Company concerned with notice of a trust.

(9) A person must, within 28 days after beginning to hold shares in a Private Company as trustee for, or otherwise on behalf of or on account of, a Company, serve on the Company, notice in writing that the person so holds the shares.

*Notices relating to non-beneficial and beneficial ownership of shares*

**251.**—(1) If, upon registration of a transfer of shares in a Company, the transferee would hold non beneficially particular shares (the “relevant shares”), being all or any of the shares to which the transfer relates, the transferee must only lodge the instrument of transfer with the Company for registration of the transfer if the instrument of transfer includes a notice that—

- (a) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non beneficially;
- (b) sets out particulars of the relevant shares; and
- (c) is signed by or on behalf of the transferee.

(2) The fact that a person has failed to comply with subsection (1) does not affect the validity of the registration of a transfer of shares in a Company.

(3) If—

- (a) an instrument of transfer of shares in a Company includes a notice of the kind referred to in subsection (1) and is lodged with the Company for registration of the transfer; and
- (b) upon registration of the transfer, the transferee holds beneficially particular shares in this subsection called the “relevant shares”, being all or any of the shares, particulars of which are set out in the notice,

then, before the end of 14 days beginning on registration of the transfer, the transferee must, whether or not the transferee begins before the end of that period to hold all or any of the relevant shares non beneficially, give to the Company a notice that—

- (i) sets out the name and address of the transferee;
- (ii) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;
- (iii) sets out particulars of the relevant shares; and
- (iv) is signed by or on behalf of the transferee.

(4) If—

- (a) an instrument of transfer of shares in a Company is lodged with the Company for registration of the transfer; and
- (b) upon registration of the transfer, the transferee holds non beneficially particular shares in this subsection called the “relevant shares”, being all or any of the shares to which the instrument of transfer relates other than, in a case in which the instrument of transfer includes a notice of the kind referred to in subsection (1), the shares, particulars of which are set out in the notice,

then, before the end of 14 days beginning on registration of the transfer, the transferee must, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the Company a notice that—

- (i) sets out the name and address of the transferee;
- (ii) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non beneficially;
- (iii) sets out particulars of the relevant shares; and
- (iv) is signed by or on behalf of the transferee.

(5) If—

- (a) at a particular time, a person holds beneficially shares in a Company; and
- (b) immediately after that time, the person holds non beneficially particular shares in this subsection called the “relevant shares”, being all or any of the shares referred to in paragraph (a),

then, before the end of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the Company a notice that—

- (i) sets out the name and address of the person;
- (ii) contains a statement to the effect that, after that time, the person holds the relevant shares non beneficially; and
- (iii) is signed by or on behalf of the person.

(6) If—

- (a) at a particular time, a person holds non beneficially shares in a Company; and
- (b) immediately after that time, the person holds beneficially particular shares, in this subsection called the “relevant shares”, being all or any of the shares referred to in paragraph (a),

then, before the end of 14 days beginning at that time, the person must, whether or not the person recommences before the end of that period to hold any of the relevant shares non beneficially, give to the Company a notice that—

- (i) sets out the name and address of the person;
- (ii) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially;
- (iii) specifies that time and sets out particulars of the relevant shares; and
- (iv) is signed by or on behalf of the person.

(7) In proceedings for an offence based on a provision of this section, a person is, unless the contrary is established, presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the transfer to, or ownership by, the person of a share or shares in the Company concerned, was aware at that time.

(8) For the purposes of this section and of section 82—

(a) if, at a particular time, a person—

- (i) holds shares in a capacity other than that of sole beneficial owner; or
- (ii) without limiting the generality of sub-paragraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person,

the first mentioned person is taken to hold the shares non beneficially at that time; and

(b) a person who holds shares at a particular time is taken to hold the shares beneficially at that time unless the person holds the shares non beneficially at that time.

## PART 22—TAKEOVERS

### *Prohibition on certain acquisitions of Relevant Interests in voting shares*

**252.**—(1) Except as provided in subsection (2), a person shall not acquire a Relevant Interest in issued voting shares in a Company if—

(a) the Company is a—

- (i) Listed Company;
  - (ii) Public Company which is not Listed; or
  - (iii) Large Private Company (in this Part called a “Target Company”);
- and

(b) because of the transaction, that person’s or someone else’s voting power in the Company increases—

- (i) from 30% or below 30%, to more than 30%; or
- (ii) from a starting point that is above 30% and below 100%,

in this Part called a “Takeover”.

(2) A person may acquire a Relevant Interest in issued voting Shares in a Company which would, but for this section contravene subsection (1) if—

- (a) the acquisition results from acceptance of an offer under a Registered Bidder’s Statement;
- (b) the acquisition results from the exercise by a person of a power, or appointment as a Receiver or Manager of the Property of a Company;

- (c) throughout the 12 months before the acquisition that person has had voting power in the Company of at least 29%, and as a result of the acquisition, the person would not have voting power in the Company more than 5 percentage points higher than they had 12 months before the acquisition;
- (d) the acquisition results from an issue of Securities that satisfies all of the following conditions—
  - (i) a Company offers to issue Securities in a particular class;
  - (ii) offers are made to every Member who holds Securities in that class to issue them with the percentage of the Securities to be issued that is the same as the percentage of the Securities in that class that they hold before the issue;
  - (iii) all of those Members have a reasonable opportunity to accept the offers made to them;
  - (iv) agreements to issue are not entered into until a specified time for acceptances of offers has closed; and
  - (v) the terms of all the offers are the same;
- (e) the acquisition results from an issue of Securities to existing Members under a dividend reinvestment plan or bonus share plan, which is available to all Members;
- (f) the acquisition results from an issue of Interests in a Managed Investment Scheme to its Members under a distribution reinvestment plan, which is available to all Members;
- (g) the acquisition results from an issue under a Registered Prospectus or Registered Offer Document of Shares in the Company in which the acquisition is made if—
  - (i) the issue is to a promoter;
  - (ii) the Registered Prospectus or Registered Offer Document is the first Registered Prospectus or Registered Offer Document issued by the Company; and
  - (iii) the Prospectus disclosed the effect that the acquisition would have on the promoter's voting power in the Company;
- (h) the acquisition results from an issue under a Registered Prospectus or Registered Offer Document of Securities in the Company in which the acquisition is made if—
  - (i) the issue is to a person as underwriter to the issue or sub-underwriter; and

- (ii) the Registered Prospectus or Registered Offer Document disclosed the effect that the acquisition would have on the person's voting power in the Company;
- (i) the acquisition results from another acquisition of a Relevant Interest in voting Shares of a Listed Company, Large Private Company or a Listed Managed Investment Scheme;
- (j) the acquisition is through a will or operation of law;
- (k) the acquisition results from an auction of forfeited Shares conducted on-market;
- (l) the acquisition that results from a compromise or arrangement approved by the Court under Part 36;
- (m) the acquisition that results from a Buy-back authorised by section 220; or
- (n) the acquisition is approved by a Special Resolution passed at a General Meeting of the Company before the acquisition takes place, with no votes being cast in favour of the resolution by the person who proposes to make the acquisition or a Related Body Corporate.

(3) Except as provided in subsection (4), a person shall not acquire a Relevant Interest in issued voting Interests in a Listed Managed Investment Scheme in this Part, (also called a "Target Scheme"), if because of the transaction, that person's or someone else's voting power in the scheme increases —

- (a) from 30% or below 30%, to more than 30%; or
- (b) from a starting point that is above 30% and below 100%,

in this Part, also called a "Takeover".

(4) A person may acquire a Relevant Interest in issued voting Interests in a Listed Managed Investment Scheme which would but for this section, contravene subsection (3) if—

- (a) the acquisition results from acceptance of an offer under a Registered Bidder's Statement;
- (b) the acquisition results from the exercise by a person of a power, or appointment as a Receiver or Manager of the Property of the Listed Managed Investment Scheme;
- (c) throughout the 12 months before the acquisition that person has had voting power in the scheme of at least 29%, and as a result of the acquisition, the person would not have voting power in the scheme more than 5 percentage points higher than they had 12 months before the acquisition;



- (d) the acquisition results from an issue of Securities that satisfies all of the following conditions—
  - (i) a Company offers to issue Securities in a particular class;
  - (ii) offers are made to every Member who holds Securities in that class to issue them with the percentage of the Securities to be issued that is the same as the percentage of the Securities in that class that they hold before the issue;
  - (iii) all of those Members have a reasonable opportunity to accept the offers made to them;
  - (iv) agreements to issue are not entered into until a specified time for acceptances of offers has closed; and
  - (v) the terms of all the offers are the same;
- (e) the acquisition results from an issue of Securities to existing Members under a dividend reinvestment plan or bonus share plan, which is available to all Members;
- (f) the acquisition results from an issue of Interests in a Managed Investment Scheme to its Members under a distribution reinvestment plan, which is available to all Members;
- (g) the acquisition results from an issue under a Registered Prospectus or Registered Offer Document of Interests in the scheme in which the acquisition is made if—
  - (i) the issue is to a promoter;
  - (ii) the Registered Prospectus or Registered Offer Document is the first Registered Prospectus or Registered Offer Document issued by the Company; and
  - (iii) the Registered Prospectus or Registered Offer Document disclosed the effect that the acquisition would have on the promoter's voting power in the Company;
- (h) the acquisition results from an issue under a Registered Prospectus or Registered Offer Document of Interests in the scheme in which the acquisition is made if—
  - (i) the issue is to a person as underwriter to the issue or sub-underwriter; and
  - (ii) the Registered Prospectus or Registered Offer Document disclosed the effect that the acquisition would have on the person's voting power in the Company;

- (i) the acquisition results from another acquisition of a Relevant Interest in voting Shares of a Listed Company, Large Private Company or a Listed Managed Investment Scheme;
  - (j) the acquisition is through a will or operation of law;
  - (k) the acquisition results from an auction of forfeited Shares conducted on-market;
  - (l) the acquisition that results from a compromise or arrangement approved by the Court under Part 36;
  - (m) the acquisition that results from a Buy-back authorised by section 220; or
  - (n) the acquisition is approved by a Special Resolution passed at a General Meeting of the Listed Managed Investment Scheme before the acquisition takes place, with no votes being cast in favour of the resolution by the person who proposes to make the acquisition or a Related Body Corporate.
- (5) A person must not—
- (a) make an offer, or cause an offer to be made on their behalf, if the person would contravene subsection (1), (2) or (3) if the offer were accepted; or
  - (b) issue an invitation, or cause an invitation to be issued on their behalf, if the person would contravene subsection (1), (2) or (3) if—
    - (i) an offer were made in response to the invitation; and
    - (ii) the offer was accepted.

*Relevant Interests in Shares or Interests in a Listed Managed Investment Scheme*

**253.**—(1) A person has a Relevant Interest in Shares or Interests in a Listed Managed Investment Scheme if they—

- (a) are the holder of the Shares or Interests in a Listed Managed Investment Scheme;
  - (b) have power to exercise, or control the exercise of, a right to vote attached to the Shares or the Interests in a Listed Managed Investment Scheme; or
  - (c) have power to dispose of, or control the exercise of a power to dispose of, the Shares or the Interests in a Listed Managed Investment Scheme.
- (2) In this section, power or control includes—
- (a) power or control that is indirect;
  - (b) power or control that is, or can be, exercised as a result of, by means of or by the revocation or breach of—
    - (i) a trust;
    - (ii) an agreement;

- (iii) a practice; or
- (iv) any combination of them,

whether or not they are enforceable; and

- (c) power or control that is, or can be made, subject to restraint or restriction.

(3) A person has the Relevant Interests in any Shares or the Interests in a Listed Managed Investment Scheme held by any of the following—

- (a) a Company, or Managed Investment Scheme, in which the person's voting power is above 30%; or
- (b) a Company, or Managed Investment Scheme, that the person controls.

*Situations not giving rise to Relevant Interests*

**254.—**(1) A person does not have a Relevant Interest in shares or interests in a Listed Managed Investment Scheme merely because of a mortgage, Charge or other security taken for the purpose of a transaction entered into by the person if—

- (a) the mortgage, Charge or security is taken or acquired in the ordinary course of the person's business of the provision of finance by any means and on ordinary commercial terms; and
- (b) the person whose Property is subject to the mortgage, Charge or security is not a Related Body Corporate of the person.

(2) A Securities Industries Licence holder does not have a Relevant Interest in Shares or Interests in a Listed Managed Investment Scheme merely because they hold Shares or Interests in a Listed Managed Investment Scheme on behalf of someone else in the ordinary course of their financial services business.

(3) A person does not have a Relevant Interest in Shares or Interests in a Listed Managed Investment Scheme merely because—

- (a) if the Relevant Interest would arise merely because the Company in which shares or Interests in the Listed Managed Investment Scheme are held has entered into an agreement to buy back the shares or Interests in a Listed Managed Investment Scheme;
- (b) the person has been appointed to vote as a proxy or representative at a meeting of Members, or of a class of Members, of the Company or Listed Managed Investment Scheme if—
  - (i) the appointment is for one meeting only; and
  - (ii) neither the person nor any Related Body Corporate gives valuable consideration for the appointment;
- (c) of a market traded option over the shares or interests in the Listed Managed Investment Scheme or a right to acquire the shares or interests in the Listed Managed Investment Scheme given by a derivative; or

- (d) the person is a Director of the Company in which shares or interests in the Listed Managed Investment Scheme are held and the Company has a Relevant Interest in those shares.

(4) A Member of a Company, body or Managed Investment Scheme does not have a Relevant Interest in Shares of the Company or Interests in the Listed Managed Investment Scheme merely because the Company's, body's or scheme's constituent document gives Members pre-emptive rights on the transfer of the shares or interests in the Listed Managed Investment Scheme if all Members have pre-emptive rights on the same terms.

*Principles governing Takeovers*

**255.** A person who proposes to undertake a Takeover ("Bidder") must conduct that transaction in accordance with this Act and with the following principles—

- (a) the acquisition of issued voting shares in the Target Company or interests in the Target Scheme should take place in efficient, competitive and informed market;
- (b) Members should know the identity of any person proposing to acquire issued voting shares in the Target Company or Interests in the Target Scheme, have adequate time to consider that proposal and be given enough information to assess the proposal's merits;
- (c) all Members should have a reasonable and equal opportunity to participate in any benefits that might accrue through any proposal under which another person would have the opportunity to acquire issued voting shares in the Target Company or interests in the Target Scheme;
- (d) an appropriate procedure should be followed in relation to any compulsory acquisition of issued voting shares in the Target Company or issued voting interests in the Target Scheme that might take place after the close of the offer; and
- (e) Members must be given the opportunity to consider any bid subject to these principles.

*Requirement for a Bidder's Statement*

**256.**—(1) An offer to undertake a Takeover can only be made by providing a Registered Bidder's Statement to each eligible Member of the Target Company or Target Scheme and a copy to the Target Company or Target Scheme.

(2) Every Bidder's Statement must—

- (a) be in writing and be dated;
- (b) be registered by the Reserve Bank;
- (c) include—
  - (i) any consent to the issue of the Bidder's Statement required under this section from any person as an expert;

- (ii) if the Bidder is a Company, the written consent of each person who is named in the Bidder's Statement as being a Director of the Company or a proposed Director of the Company; and
  - (iii) contain all documents, information, statements, certificates, and other matters that it is required to contain by regulations made under this Act;
- (d) be signed by the Bidder; and
- (e) if the Bidder is a Company, be signed by the Company issuing the Bidder's Statement and every person who is a Director of the Company at the date of the Bidder's Statement.

(3) If the Bidder's Statement contains an offer of Securities or any interest in a Security as consideration for the offer under the Bidder's Statement, the Bidder's Statement must also meet all of the requirements for a Prospectus issued under Part 26.

*Requirement for a Target's Statement*

**257.**—(1) The Target must, within 14 days after it receives the Registered Bidder's Statement, or any longer period that the Reserve Bank may allow, send a Registered Target's Statement to the Bidder and each eligible Member of the Target Company or Target Scheme.

(2) Every Target's Statement must—

- (a) be in writing and be dated;
- (b) be registered by the Reserve Bank;
- (c) include—
  - (i) any consent to the issue of the Targets Statement required by section 259 from any person as an expert;
  - (ii) if the target is a Target Company, the written consent of each person who is named in the Target's Statement as being a Director of the Target Company;
  - (iii) if the target is a Target Scheme, the written consent of each person who is named in the Target's Statement as being a Director of the Manager of the Target Scheme; and
  - (iv) contain all documents, information, statements, certificates, and other matters that it is required to contain by regulations made under this Act;
- (d) if the target is a Target Company, be signed by the Target Company issuing the Target's Statement and every person who is a Director of the Target Company at the date of the Target's Statement;

- (e) if the target is a Target Scheme, be signed by the Manager of the Target Scheme issuing the Target's Statement and every person who is a Director of the Manager of the Target Scheme at the date of the Target's Statement;
- (f) if the target is a Target Company, a statement by each Director of the Target Company—
  - (i) recommending that offer made under the Bidder's Statement be accepted or not accepted, and giving reasons for the recommendation; or
  - (ii) giving reasons why a recommendation is not made; and
- (g) if the target is a Target Scheme, a statement by each Director of the Manager of the Target Scheme—
  - (i) recommending that offer made under the Bidder's Statement be accepted or not accepted, and giving reasons for the recommendation; or
  - (ii) giving reasons why a recommendation is not made.

*Registration of Bidder's Statement and Target's Statement*

**258.**—(1) Subject to subsections (2) and (3), the Reserve Bank may register—

- (a) a Bidder's Statement delivered to the Reserve Bank in accordance with section 256; and
- (b) a Target's Statement delivered to the Reserve Bank in accordance with section 257.

(2) The Reserve Bank may refuse to register a Bidder's Statement or Target's Statement if—

- (a) it does not comply with this Act or any regulations made under this Act;
- (b) it contains any misdescription, error or a matter that is not clearly legible or is contrary to law; or
- (c) the prescribed amount payable on registration is not paid.

(3) The Reserve Bank must refuse to register a Bidder's Statement or Target's Statement if—

- (a) the Reserve Bank is of the opinion that the Bidder's Statement contains a statement that is false or misleading in a material way particular or omits any material particular;
- (b) the Reserve Bank is of the opinion that the Bidder's Statement or Target's Statement does not contain all information reasonably necessary for a Member of the Target Company or Target Scheme to understand the nature and the terms of the offer and would reasonably require to make an informed assessment whether to accept the offer under the Bidder's Statement; or

- (c) in the case of a Bidder's Statement, the Reserve Bank is not satisfied that the Bidder has fully complied with the principles set out in section 252.

(4) Upon registration of a Bidder's Statement or Target's Statement pursuant to this section, the Reserve Bank must give a certificate of that registration, and the certificate must be conclusive evidence that the Bidder's Statement or Target's Statement has been registered.

*Statements by experts*

**259.**—(1) A Bidder's Statement or Target's Statement containing a statement purporting to be made by an expert must not be registered by the Reserve Bank unless—

- (a) the expert has given and has not, before delivery of a copy of the Bidder's Statement for registration in accordance with section 256, withdrawn his or her written consent to the distribution of the Bidder's Statement with the statement included in the form and context in which it is included;
- (b) the expert has given and has not, before delivery of a copy of the Target's Statement for registration in accordance with section 257, withdrawn his or her written consent to the distribution of the Target's Statement with the statement included in the form and context in which it is included;
- (c) a statement that the expert has given and has not withdrawn his or her consent as aforesaid appears in the Bidder's Statement or Target's Statement;
- (d) a statement of the expert's qualifications appears in the Bidder's Statement or Target's Statement;
- (e) if the statement by the expert was made more than 4 months before the date of delivery of the Bidder's Statement for registration in accordance with section 256, a supplementary statement on the same matter made by the same or another expert less than 4 months before that date appears in the Bidder's Statement; and
- (f) if the statement by the expert was made more than 4 months before the date of delivery of the Target's Statement for registration in accordance with section 257, a supplementary statement on the same matter made by the same or another expert less than 4 months before that date appears in the Target's Statement.

(2) A Bidder's Statement must not contain a statement by a person as an expert where the person is a Director, Officer, or employee of, or professional adviser to, the Bidder.

(3) A Target's Statement must not contain a statement by a person as an expert where the person is a Director, Officer, or employee of, or professional adviser to, the Target Company, the Target Scheme or the Manager of the Target Scheme.

(4) Where under subsection (1)(e) or (f), a supplementary statement by an expert is required to appear in a Bidder's Statement or Target's Statement respectively—

- (a) the supplementary statement must specifically affirm, deny, or qualify all assertions of fact contained in the original statement; and
- (b) if in the opinion of the expert making the supplementary statement, any opinions expressed in the original statement require further comment because of any such denial or qualification of any assertions of fact, or for any other reason, the supplementary statement must contain such comments.

*Amendment of Registered Bidder's Statement or Registered Target's Statement*

**260.**—(1) A Registered Bidder's Statement may be amended by a memorandum of amendments to the Registered Bidder's Statement or Registered Target's Statement (in this section called a "memorandum of amendments") delivered to the Reserve Bank and registered under this section.

(2) Every memorandum of amendments delivered to the Reserve Bank must be delivered in duplicate and accompanied by a copy of the Registered Bidder's Statement or Registered Target's Statement as amended.

(3) Subject to subsections (4) and (5), the Reserve Bank may register a memorandum of amendments to a Registered Bidder's Statement or Registered Target's Statement delivered to the Reserve Bank in accordance with this section.

(4) The Reserve Bank may refuse to register a memorandum of amendments if—

- (a) pursuant to section 256, the Reserve Bank could have refused to register the Registered Bidder's Statement as amended if it had been delivered for registration at the time of the delivery to the Reserve Bank of the memorandum of amendments;
- (b) pursuant to section 257, the Reserve Bank could have refused to register the Registered Target's Statement as amended if it had been delivered for registration at the time of the delivery to the Reserve Bank of the memorandum of amendments; or
- (c) the prescribed amount payable on registration is not paid.

(5) The Reserve Bank must refuse to register a memorandum of amendments to a Registered Bidder's Statement or Registered Target's Statement if—

- (a) the Reserve Bank is of the opinion that the Registered Bidder's Statement or Registered Target's Statement as amended contains a statement that is false or misleading on a material particular or omits any material particular;
- (b) the Reserve Bank is of the opinion that the Registered Bidder's Statement or Registered Target's Statement as amended does not contain all information reasonably necessary for a Member of the Target to understand the nature



and the terms of the offer and would be reasonable to require to make an informed assessment whether to accept the offer under the Registered Bidder's Statement; or

- (c) in the case of a Registered Bidder's Statement, the Reserve Bank is not satisfied that the Bidder has fully complied with the principles set out in section 252.

(6) Upon registration of a memorandum of amendments to a Registered Bidder's Statement or Registered Target's Statement pursuant to this section, the Reserve Bank must give a certificate of that registration, and the certificate must be conclusive evidence that the memorandum has been registered under this section.

*Suspension and cancellation of registration of Registered Bidder's Statement  
or Registered Target's Statement*

**261.**—(1) Where at any time the Reserve Bank is of the opinion that a Registered Bidder's Statement or Registered Target's Statement is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the Bidder's Statement or Target's Statement was registered), or does not comply with this Act and any regulations made under this Act, the Reserve Bank may exercise either or both of the following powers in respect of the Registered Bidder's Statement or Registered Target's Statement—

- (a) if it considers that suspension of the registration of the Registered Bidder's Statement or Registered Target's Statement is desirable in the public interest, the Reserve Bank may suspend the registration of the Registered Bidder's Statement or Registered Target's Statement for a period not exceeding 14 days; or
- (b) after giving the Company issuing the Registered Bidder's Statement, or Target Company or Target Scheme issuing the Registered Target's Statement, not less than 7 days written notice of the meeting at which the matter will be considered by the Reserve Bank, the Reserve Bank may at that meeting cancel the registration of the Registered Bidder's Statement or Registered Target's Statement.

(2) Where the Reserve Bank suspends the registration of a Registered Bidder's Statement or Registered Target's Statement pursuant to this section it must immediately notify the Bidder and the Target Company or Target Scheme of the suspension and the reasons for the suspension.

(3) Where the registration of a Registered Bidder's Statement is suspended—

- (a) no transfer must be made of any Securities which may otherwise be able to be transferred to the Bidder whether before or after the suspension of the registration of the Registered Bidder's Statement;

- (b) all subscriptions received for Securities, not being subscriptions for Securities which have been allotted before the registration of the Registered Bidder's Statement is suspended, must be held in trust or for the subscribers.

(4) Where the period of suspension of registration of a Registered Bidder's Statement has expired and the registration of that Registered Bidder's Statement has not been cancelled under this section, subsection (3) must cease to have any application.

(5) Where, at any time, the Reserve Bank is of the opinion that an advertisement—

- (a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of Securities to which it relates;
- (b) is inconsistent with any Registered Bidder's Statement or Registered Target's Statement referred to in it; or
- (c) does not comply with this Act and regulations made under this Act,

the Reserve Bank may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of Securities.

(6) The Reserve Bank may make an order on such terms and conditions as it thinks fit.

(7) Where the Reserve Bank makes an order under subsection (5)—

- (a) it must notify the issuer of the Shares that the order has been made and the reasons for making it; and
- (b) it may notify any other person that the order has been made and the reasons for making it.

(8) Every person who contravenes an order made under subsection (5) commits an offence and is liable on summary conviction to pay a penalty not exceeding the maximum penalty prescribed for this section.

(9) It is a defence to a charge under subsection (8) if the person proves that the advertisement was distributed—

- (a) without the person's knowledge; or
- (b) without the person's knowledge of the order.

*Compulsory acquisition of shares or interests following a Takeover*

**262.**—(1) Where a Bidder acquires a Relevant Interest in issued voting Shares in a Target Company or issued voting Interests in a Target Scheme pursuant to an offer made under a Registered Bidder's Statement, which has voting power attached to that interest of at least 90% in value of the Shares in the Target Company or Interests in the Target Scheme (90% Relevant Interest), then—

- (a) the Bidder must, within 28 days from the date of acquiring a 90% Relevant Interest, give notice of that fact in the prescribed form to the holders of the remaining shares in the Target Company or Interests in the Target Scheme who have not accepted the offer; and

- (b) any such holder may, within 3 months from the giving of the notice to him or her, require the Bidder to acquire the shares in the Target Company or interests in the Target Scheme in question.

(3) When a notice is given under subsection (1)(a), the Bidder must be entitled and bound to acquire, and the holders of the remaining shares in the Target Company or interests in the Target Scheme will be bound to sell to the Bidder, those shares in the Target Company or interests in the Target Scheme on the terms on which, under the Registered Bidder's Statement, the shares in the Target Company or interests in the Target Scheme of the approving Members were to be transferred to the Bidder.

(3) The Bidder must, within 14 days after—

- (a) the end of 28 days after the day on which the notice was given; or
- (b) if an application has been made to the Court by a dissenting holder of the remaining shares in the Target Company or interests in the Target Scheme—the application is disposed of,

whichever happens last—

- (i) send a copy of the notice to the holders of the remaining shares in the Target Company or interests in the Target Scheme together with an instrument of transfer that relates to the shares in the Target Company or Interests in the Target Scheme that the Bidder is entitled to acquire under this section and is executed, on the Member's behalf, by a person appointed by the Bidder and, on the Bidder's own behalf, by the Bidder; and
- (ii) pay, allot or transfer to the transferor the consideration for the Shares in the Target Company or Interests in the Target Scheme.

(4) All sums received by the Bidder under this section must be paid into a separate bank account and those sums, and any other consideration so received, must be held by the Bidder in trust for the several persons entitled to the shares in the Target Company or interests in the Target Scheme in respect of which they were respectively received.

*Compulsory acquisition of Shares or Interests other than following a Takeover*

**263.**—(1) Where a person ("Acquiror") acquires a Relevant Interest in issued voting Shares in a Target Company or issued voting Interests in a Target Scheme other than pursuant to an offer made under a Registered Bidder's Statement, which has voting power attached to that interest of at least 90% in value of the Shares in a Target Company or Interests in a Target Scheme ("90% Relevant Interest"), then—

- (a) the Acquiror must, within 28 days from the date of acquiring a 90% Relevant Interest, give notice of that fact in the Prescribed Form to the holders of the remaining Shares in the Target Company or Interests in the Target Scheme; and

- (b) any such holder may, within 3 months from the giving of the notice to him or her, require the Acquiror to acquire the Shares in the Target Company or Interests in the Target Scheme in question.

(2) When a notice is given under paragraph (a), the Acquiror must be entitled and bound to acquire, and the holders of the remaining Shares in the Target Company or Interests in the Target Scheme will be bound to sell to the Acquiror, those Shares in the Target Company or Interests in the Target Scheme on the terms set out in the notice, including the cash sum for which the Acquiror proposed to acquire the remaining Shares in the Target Company or Interests in the Target Scheme.

(3) The Acquiror must, within 14 days after—

- (a) the end of 28 days after the day on which the notice was given; or
- (b) if an application has been made to the Court by a dissenting holder of the remaining Shares in the Target Company or Interests in the Target Scheme – the application is disposed of,

whichever happens last—

- (i) send a copy of the notice to the holders of the remaining Shares in the Target Company or Interests in the Target Scheme together with an instrument of transfer that relates to the Shares in the Target Company or Interests in the Target Scheme that the Acquiror is entitled to acquire under this section and is executed, on the Member's behalf, by a person appointed by the Acquiror and, on the Acquiror's own behalf, by the Acquiror; and
- (ii) pay, allot or transfer to the transferor the consideration for the Shares in the Target Company or Interests in the Target Scheme.

(4) All sums received by the Acquiror under this section must be paid into a separate bank account and those sums, and any other consideration so received, must be held by the Acquiror in trust for the several persons entitled to the Shares in the Target Company or Interests in the Target Scheme in respect of which they were respectively received.

*Compulsory acquisition of Convertible Securities*

**264.**—(1) Where a person (“Acquiror”) acquires a Relevant Interest in issued voting Shares in a Target Company or issued voting Interests in a Target Scheme either pursuant to an offer made under a Registered Bidder's Statement or otherwise in accordance with this Act, which has voting power attached to that interest of at least 100% in value of the Shares in a Target Company or Interests in a Target Scheme (“100% Relevant Interest”), then—

- (a) the Acquiror must, within 28 days from the date of acquiring a 100% Relevant Interest, give notice of that fact in the Prescribed Form to the holders of any Convertible Securities in the Target Company or Target Scheme; and

- (b) any such holder may, within 3 months from the giving of the notice to him or her, require the Acquiror to acquire the Convertible Securities in question.

(2) When a notice is given under paragraph (a), the Acquiror must be entitled and bound to acquire, and the holders of the Convertible Securities in the Target Company or the Target Scheme will be bound to sell to the Acquiror, those Convertible Securities in the Target Company or the Target Scheme on the terms set out in the notice, including the cash sum for which the Acquiror proposed to acquire the Convertible Securities in the Target Company or the Target Scheme.

(3) The Acquiror must, within 14 days after—

- (a) the end of 28 days after the day on which the notice was given; or
- (b) if an application has been made to the Court by a dissenting holder of the Convertible Securities in the Target Company or the Target Scheme – the application is disposed of,

whichever happens last—

- (i) send a copy of the notice to the holders of the Convertible Securities in the Target Company or the Target Scheme together with an instrument of transfer that relates to the Convertible Securities in the Target Company or the Target Scheme that the Acquiror is entitled to acquire under this section and is executed, on the Member's behalf, by a person appointed by the Acquiror and, on the Acquiror's own behalf, by the Acquiror; and
- (ii) pay, allot or transfer to the transferor the consideration for the Convertible Securities in the Target Company or the Target Scheme.

(4) All sums received by the Acquiror under this section must be paid into a separate bank account and those sums, and any other consideration so received, must be held by the Acquiror in trust for the several persons entitled to the Convertible Securities in the Target Company or the Target Scheme in respect of which they were respectively received.

*Minimum cash sum to be offered under sections 263 and 264*

**265.**—(1) The cash sum offered under a notice issued under section 263 must equal or exceed the maximum consideration that the Acquiror or a Related Body Corporate provided, or agreed to provide, for the issued voting Shares in a Target Company or issued voting Interests in a Target Scheme under any purchase or agreement during the 4 months before the date of the notice.

(2) The cash sum offered under a notice issued under section 264 must equal or exceed the maximum consideration that the Acquiror or a Related Body Corporate provided, or agreed to provide, for the issued Convertible Securities in a Target Company or Interests in a Target Scheme under any purchase or agreement during the 4 months before the date of the notice.

(3) For the purposes of this section, the consideration offered or provided for a security is—

- (a) if the consideration offered or provided is a cash sum only – the amount of that cash sum;
- (b) if the consideration offered or provided does not include a cash sum – the value of that consideration; or
- (c) if the consideration offered or provided is a cash sum and other consideration – the sum of the amount of the cash sum and the value of the other consideration.

(4) The value of consideration that is not a cash sum is to be ascertained as at the time the relevant offer, purchase or agreement is made.

(5) If—

- (a) a person agrees to buy issued voting Shares in a Target Company or Interests in a Target Scheme, or Convertible Securities in a Target Company or a Target Scheme; and
- (b) the agreement provides that the price payable is a price specified in the agreement but may be varied in accordance with the terms of the agreement.

(6) Any variation in price under the agreement is to be disregarded in working out, for the purposes of this section, the price agreed to be paid under the agreement.

*Declaration of unacceptable circumstances*

**266.**—(1) The Reserve Bank may declare circumstances in relation to the Affairs of a Target Company or Target Scheme during a Takeover to be unacceptable circumstances if it appears to the Reserve Bank that the circumstances—

- (a) are unacceptable having regard to the effect that the Reserve Bank is satisfied the circumstances have had, are having, will have or are likely to have on—
  - (i) the Control, or potential control, of the Target Company or Target Scheme, or another Company or Managed Investment Scheme; or
  - (ii) the acquisition, or proposed acquisition, by a person of a Relevant Interest in the Target Company or Target Scheme, or another Company or Managed Investment Scheme; or
- (b) are unacceptable because they constituted, constitute, will constitute or are likely to constitute a contravention of this Act; or
- (c) are otherwise unacceptable having regard to the principles set out in section 255.

(2) Without limiting this, the Reserve Bank may declare circumstances to be unacceptable circumstances whether or not the circumstances constitute a contravention of a provision of this Act.

*Orders following a declaration of unacceptable circumstances*

**267.**—(1) If it has declared circumstances to be unacceptable under section 266, the Reserve Bank may make an order that it thinks appropriate to—

- (a) if the Reserve Bank is satisfied that the rights or interests of any person, or group of persons, have been or are being affected, or will be or are likely to be affected, by the circumstances – protect those rights or interests, or any other rights or interests, of that person or group of persons;
- (b) ensure that a Takeover proceeds (as far as possible) in a way that it would have proceeded if the circumstances had not occurred; or
- (c) specify in greater detail the requirements of an order made under this subsection.

(2) The Reserve Bank may also make any ancillary or consequential orders that it thinks appropriate.

(3) The Reserve Bank may vary, revoke or suspend an order made under this section.

(4) If the Reserve Bank makes an order under this section, the Reserve Bank must give a copy of the order, and a written statement of its reasons for making the order, to—

- (a) each person to whom the order is directed;
- (b) for an order relating to specified Shares of a Company – the Company;
- (c) for an order relating to specified Interests of a Managed Investment Scheme – the Manager; and
- (d) the Registrar using the Prescribed Form.

**PART 23—REGULATION OF SECURITIES EXCHANGES  
AND CENTRAL DEPOSITORY**

*Approval of Securities Exchange and Central Depository required*

**268.** Subject to this Act, no person may carry on a business as a Securities Exchange or Central Depository unless the person and the rules under which the Securities Exchange or Central Depository are to be governed have been approved as a Securities Exchange or Central Depository by the Reserve Bank.

*Applications for Securities Exchange and Central Depository approval*

**269.**—(1) An application for approval as a Securities Exchange and Central Depository must be made to the Reserve Bank in the Prescribed Form and if there is no such form, in the form and manner prescribed by the Reserve Bank, accompanied by a fee for the Prescribed Amount.

(2) The Reserve Bank may, by notice in writing, approve a person as a Securities Exchange or Central Depository if it is satisfied that the applicant is a Company which meets the conditions set out in rules issued by the Reserve Bank.



(3) The Reserve Bank may prescribe the form and manner for an application for approval as a Securities Exchange and Central Depository.

*Changes in Securities Exchange and Central Depository rules*

**270.**—(1) The rules of an approved Securities Exchange and Central Depository in so far as they have been approved by the Reserve Bank, must not be amended, varied or rescinded without the prior written approval of the Reserve Bank.

(2) Where the board of Directors of an approved Securities Exchange or Central Depository wishes to amend its rules, it must provide the amendments to the Reserve Bank for approval.

(3) Where an approved Securities Exchange or Central Depository wishes to commence using an electronic trading platform which allows for the settlement of Listed Securities transactions or dealings in Listed Securities without the physical delivery of scrips, it must amend its rules to provide for electronic trading and provide the amendments to the Reserve Bank for approval, and if the amendments concerning electronic trading are disallowed, the Securities Exchange or Central Depository concerned must not commence using an electronic trading platform.

(4) The Reserve Bank must, after hearing from the Securities Exchange and Central Depository, and within 30 days of receipt of a notice under subsection (2) give written notice to the Securities Exchange or Central Depository stating whether the proposed amendments to the rules are allowed or disallowed and in the event of the rules being disallowed, the Reserve Bank must give reasons for such disallowance.

(5) Notwithstanding subsection (2), a proposed rule change may take effect upon filing with the Reserve Bank if designated by the Securities Exchange or Central Depository as—

- (a) a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule;
- (b) a proposal establishing or changing a fee or other Charge; or
- (c) a proposal dealing solely with the administration of the Securities Exchange or Central Depository or other matters which the Reserve Bank may specify.

(6) Where an approved Securities Exchange or Central Depository proposes to alter any particulars already furnished or undergoes or intends to undergo a change event it must inform the Reserve Bank and obtain its prior consent before the change is effected.

(7) For the purpose of subsection (6), a “change event” means, where the approved Securities Exchange or Central Depository is operated by a Company, a change in the person who at the time an application for approval as a Securities Exchange and Central Depository is made—

- (a) determines the composition of the board of Directors of the Company;



- (b) in accordance with whose instructions, directions or wishes the board of Directors of the Company is accustomed to act;
- (c) holds or owns (alone or with its Related Bodies Corporate)—
  - (i) the majority of the issued Shares of the Company;
  - (ii) the majority of the issued Shares of the Ultimate Holding Company of the Company; or
  - (iii) the majority of any Securities or other rights granted by the Company entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the Company.

*Disciplinary actions by the Securities Exchange*

**271.**—(1) Where a Securities Exchange reprimands, fines suspends or expels, or otherwise takes disciplinary action against a member of the Securities Exchange or a Listed Company, it must within 7 days give notice to the Reserve Bank in writing, giving particulars including the name of the person, the reason for and nature of the action taken.

(2) The Reserve Bank may review any disciplinary action taken by a Securities Exchange under subsection (1) and, on its own motion, or in response to the appeal of an aggrieved person, may affirm or set aside the decision of the Securities Exchange after giving the member of a Securities Exchange or Listed Company and the Securities Exchange an opportunity to be heard.

(3) Nothing in this section must preclude the Reserve Bank, in any case where a Securities Exchange fails to act against a member of the Securities Exchange or a Listed Company, from itself, suspending, expelling or otherwise disciplining the subject person, but before doing so the Reserve Bank must give the member of the Securities Exchange or a Listed Company and the Securities Exchange an opportunity to be heard.

**PART 24—REGULATION OF SECURITIES INDUSTRY LICENCES**

*Licences required*

**272.** No person must carry on a business as a Broker, Investment Adviser or representative of a Broker or Investment Adviser, or hold themselves out as carrying on such a business unless the person is a holder of a Securities Industry Licence issued under this Act.

*Application for Securities Industry Licence*

**273.**—(1) An application for a Securities Industry Licence or for the renewal of a Securities Industry Licence must be made to the Reserve Bank in the Prescribed Form or if there is no such form, in the form and manner prescribed by the Reserve Bank, accompanied by a fee for the Prescribed Amount and in the case of an application for the renewal of a Securities Industry Licence, must be made not less than 2 months prior to the expiry of the Securities Industry Licence.

(2) The Reserve Bank may require an applicant for a Securities Industry Licence to supply such further information as it considers necessary in relation to the application.

(3) An applicant for a Securities Industry Licence must meet, and continue at all times during the term of a Securities Industry Licence issued to it, to meet such minimum financial and other requirements as may be prescribed by the Reserve Bank.

(4) The Reserve Bank may prescribe the minimum financial and other requirements for the holder of a Securities Industry Licence.

(5) The Reserve Bank must not grant a Securities Industry Licence to an applicant if the applicant does not comply with this section.

(6) The Reserve Bank may grant a Securities Industry Licence subject to such conditions or restrictions as it thinks fit and the Reserve Bank may, at any time by written notice to a licence holder, vary any such condition or restriction or impose further conditions or restrictions.

(7) The Reserve Bank must not refuse to grant or renew a Securities Industry Licence without first giving the applicant or holder of a licence an opportunity of being heard.

(8) Subject to subsection (9), a Securities Industry Licence granted under this section must expire 1 year after the date of issue of the Securities Industry Licence.

(9) A Securities Industry Licence that has been renewed in accordance with the provisions of this section must continue in force for a period of 1 year next succeeding the date upon which but for its renewal, it would have expired.

*Renewal of Securities Industry Licence*

**274.**—(1) In granting a renewal of a Securities Industry Licence, the Reserve Bank must satisfy itself that the licensed person is in compliance with the provisions of this Act.

(2) In considering an application for a Securities Industry Licence renewal, the Reserve Bank may extend an existing Securities Industry Licence for a period of 3 months in order to permit an applicant to take such action as the Reserve Bank deems necessary to come into compliance with this Act.

(3) In granting an extension to any person under subsection (2), the Reserve Bank may impose any conditions or restrictions it deems appropriate on the activities of the person.

*Cancelling, suspending or restricting Securities Industry Licences*

**275.**—(1) Where the Reserve Bank is satisfied that the holder of a Securities Industry Licence—

- (a) has contravened or failed to comply with any provision of this Act;
- (b) has ceased to be in good financial standing;

- (c) has since the grant of the Securities Industry Licence, ceased to qualify for such a licence;
- (d) is guilty of malpractice or irregularity in the management of his or her business; or
- (e) is adjudged bankrupt,

the Reserve Bank may—

- (i) direct the person to take whatever action the Reserve Bank deems necessary to—
  - A. correct the conditions resulting from any contravention of any provision of this Act; or
  - B. come into compliance with the provisions of this Act; or
- (ii) cancel, suspend or impose conditions, restrictions or limitations on the Securities Industry Licence granted to the person.

(2) The Reserve Bank must not cancel, suspend or impose conditions, restrictions or limitations on a Securities Industry Licence under subsection (1) without first giving the holder of the Securities Industry Licence an opportunity to be heard.

*Register of licence holders*

**276.** The Reserve Bank must keep in such form as it deems appropriate a register of the holders of current Securities Industry Licences specifying, in relation to each holder of a licence the—

- (a) name of the person;
- (b) address of the principal place at which he or she carries on the licensed business; and
- (c) name or style under which the business is carried on if different from the name of the holder of the Securities Industry Licence.

*Obligation to report changes*

**277.** Where—

- (a) the holder of a Securities Industry Licence ceases to carry on the business to which the Securities Industry Licence relates; or
- (b) a change occurs in any of the particulars which are required by section 276 to be entered in a register of licence holders with respect to the holder of a Securities Industry Licence, the holder of the Securities Industry Licence must within 14 days of the occurrence of the event concerned, give to the Reserve Bank, particulars of such event in the Prescribed Form or if there is no such form, in the form and manner prescribed by the Reserve Bank.

*Suitability*

**278.**—(1) In granting Securities Industry Licences to a Company, the Reserve Bank must satisfy itself that—

- (a) the applicant is of sound financial standing;
- (b) the applicant is a member of a Securities Exchange approved under Part 23;
- (c) the applicant is a Company incorporated under this Act;
- (d) each Director of the applicant—
  - (i) has never been declared bankrupt or if he or she has been declared bankrupt then the date of adjudication of bankruptcy should not be less than 7 years from the date of the Company's application;
  - (ii) has never been a Director of a Company that has been denied a Securities Industry Licence; or
  - (iii) has never been a Director of a Company whose Securities Industry Licence has been revoked by the appropriate authority;
- (e) at least one Director and at least one employee who will be the chief employee of the applicant, have satisfied such minimum entry requirements and have passed such examinations as may be prescribed; and
- (f) the applicant has lodged security in such sum as may be determined by the Reserve Bank or an equivalent bank guarantee with the Securities Exchange of which it is a member.

(2) In granting a Securities Industry Licence to an individual, the Reserve Bank must satisfy itself that the applicant—

- (a) is of sound financial standing;
- (b) is a member of a Securities Exchange approved under this Act;
- (c) has satisfied such minimum entry requirements and passed such examinations as may be prescribed; and
- (d) has lodged security in such sum as may be determined by the Reserve Bank, or an equivalent bank guarantee with the Securities Exchange of which he or she is a member.

(3) The Reserve Bank may prescribe—

- (a) the minimum entry requirements and such examinations as are required to be passed by at least one Director and at least one employee who will be the chief employee of an applicant;
- (b) the minimum entry requirements and such examinations as are required to be passed by an individual applicant; and

- (c) the sum of the security lodged with the Reserve Bank by an applicant or the equivalent bank guarantee lodged with the Securities Exchange of which the applicant is a member.

*Exempt dealers*

**279.** The following specified persons are not required to hold a Securities Industry Licence—

- (a) the Government;
- (b) the Reserve Bank;
- (c) the Fiji National Provident Fund for so long as it is established under, and regulated by, the Fiji National Provident Fund Decree 2011;
- (d) a person who only deals in Securities on account of others solely in his or her capacity as—
  - (i) the Official Receiver or liquidator of a Company or Managed Investment Scheme;
  - (ii) a trustee in bankruptcy;
  - (iii) the Public Trustee appointed under the Fiji Public Trustee Corporation Act 2006;
  - (iv) an executor of the estate of a deceased person; or
  - (v) a person appointed by a court to administer an estate or any Property;
- (e) a financial institution licensed under the Banking Act 1995, which only deals in Government issued or Government guaranteed Securities;
- (f) an insurance Company licensed under the Insurance Act 1998, which only deals in Government issued or Government guaranteed Securities;
- (g) a person who carries on a business of dealing in Securities only through the holder of a Securities Industry Licence for his or her own account.

**PART 25—TRANSACTIONS INVOLVING LISTED SECURITIES**

*Transactions in Listed Securities*

**280.—(1)** The holder of a Securities Industry Licence must not—

- (a) trade in Listed Securities outside the Securities Exchange of which the licence holder is a member except as authorised by the Reserve Bank on a case by case basis;
- (b) trade in Listed Securities in contravention of such rules as the Reserve Bank may prescribe with respect to the clearance, settlement, payment, transfer or delivery of Listed Securities;
- (c) effect any transaction in a margin account in a manner contrary to requirements adopted by the Reserve Bank;

- (d) lend or arrange the lending of any Listed Securities carried for the account of any customer without the customer's written consent, or borrow, or arrange to borrow, Listed Securities using the Securities carried for the account of any customer, as collateral, without the customer's written consent; or
- (e) effect any transaction in, or induce or attempt the purchase or sale of, any Listed Securities by means of any manipulative deception, or other fraudulent device or contrivance.

(2) The Reserve Bank may prescribe rules with respect to the clearance, settlement, payment, transfer or delivery of Listed Securities.

(3) No person holding Listed Securities, must sell such Listed Securities except in compliance with the trading procedures adopted by such Securities Exchange.

(4) No person must, directly or indirectly, in connection with the purchase or sale of any Security—

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (c) make any untrue statement of a material fact; or
- (d) omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading.

(5) The holder of a Securities Industry Licence must not execute a transaction for his or her own account, related family account, or for the account of his or her firm, whether in a secondary market or on an underwriting, until all customer orders, either at market or at the same price, have been filled.

## PART 26—CAPITAL RAISINGS

### *Division 1—Prohibition on Offers*

#### *Prohibition on offers of Securities*

**281.** No offers of Securities whether for sale or issue are permitted except in accordance with this Part.

#### *Prohibition on offers of Securities by Private Companies*

**282.** A Private Company must not offer Securities for issue to the public.

### *Division 2—Offers to the Public*

#### *Offers to the public*

**283.—**(1) Except as otherwise permitted by this Part, an offer to the public of Securities may only be made under a Prospectus.

- (2) In this Part, “offer to the public” means an offer of Securities to—
- (a) any section of the public, however selected;
  - (b) individual members of the public, however selected; and
  - (c) any section of the public or individual members of the public, who have approached the Company to acquire Securities.
- (3) An offer of Securities to the Public may be made without a Prospectus if—
- (a) the offer is a personal offer and none of the offers results in Securities being issued, or sold, as the case may be, to more than 20 investors having an aggregate issue or sale price of more than \$1 million in a 12 month period;
  - (b) the minimum amount payable for the Securities on acceptance of the offer by a person to whom the offer is made is at least \$200,000;
  - (c) the offer is made—
    - (i) through the holder of a Securities Industry Licence and the person to whom the offer is made (“Offeree”) has received a certificate from the licensee no more than 6 months before the offer is made stating that the licensee is satisfied on reasonable grounds that the Offeree has previous experience in investing in Securities that allows them to assess—
      - (a) the merits of the offer;
      - (b) the value of the Securities;
      - (c) the risks involved in accepting the offer;
      - (d) their own information needs; and
      - (e) the adequacy of the information given by the person making the offer; and
    - (ii) states the reasons for being satisfied as to those matters;
  - (d) the offer is made to a Related Body Corporate of the entity in which Securities are being offered;
  - (e) the offer is made to an Officer of the entity in which Securities are being offered;
  - (f) the offer is made as consideration under a Registered Bidder’s Statement;
  - (g) the offer is made in the ordinary course of trading on a Securities Exchange; or
  - (h) the offer only involves the issue of debt securities issued by a financial institution licensed under the Banking Act 1995 or the issue of life insurance policies by an insurance Company licensed under the Insurance Act 1998.

(4) An offer of Securities to the Public may be made without a Prospectus if the offer is made—

- (a) by the Government;
- (b) by a Government Entity;
- (c) by the Reserve Bank; or
- (d) under regulations made under this Act.

(5) An offer to the public of Securities by way of sale is only required to be made under a Prospectus if—

- (a) the Securities are offered for sale by a person who Controls the entity in which Securities are being offered; or
- (b) the Securities were issued to the offeror within 6 months before the date of the offer, unless the offeror establishes to the satisfaction of the Reserve Bank or the Court that the Securities were not issued with the intention that they be resold.

*Minimum content of Prospectus*

**284.** Every Prospectus must—

- (a) be in writing and be dated (being the issue date);
- (b) be registered by the Reserve Bank;
- (c) meet the minimum content requirements in Schedule 3;
- (d) include—
  - (i) any consent to the issue of the Prospectus required by section 291 from any person as an expert;
  - (ii) the written consent of each person who is named in the Prospectus as being a Director of the Company or a proposed Director of the Company; and
  - (iii) all documents, information, certificates, and other matters required to be endorsed thereon or attached thereto for the purposes of this section by regulations made under this Act; and
- (e) be signed by the Company issuing the Prospectus and every person who is a Director of the Company at the date of the Prospectus.

*Division 3—Offers to Existing Members by a Public Company*

*Offers to the existing Members by a Public Company*

**285.—**(1) An offer of Securities by a Public Company to existing Members of the Company may be made under an Offer Document.



(2) In this Part, “existing members” means Members of the Company offering Securities for sale as at the issue date of the Prospectus or Offer Document.

*Minimum content of Offer Document*

**286.** Every Offer Document must—

- (a) be in writing and be dated (being the issue date);
- (b) be registered by the Reserve Bank;
- (c) meet the minimum content requirements in Schedule 4;
- (d) include—
  - (i) any consent to the issue of the Offer Document required by section 291 from any person as an expert;
  - (ii) the written consent of each person who is named in the Offer Document as being a Director of the Company or a proposed Director of the Company; and
  - (iii) all documents, information, certificates, and other matters required to be endorsed thereon or attached thereto for the purposes of this section by regulations made under this Act; and
- (e) be signed by the Company issuing the Offer Document and every person who is a Director of the Company at the date of the Offer Document.

*Division 4—General Provisions Governing Capital Raisings*

*Prospectus or Offer Document valid for 12 months*

**287.** A Registered Prospectus or Registered Offer Document is only valid for 12 months from the issue date of the Registered Prospectus or Registered Offer Document.

*Application money to be held on trust*

**288.—**(1) If a Company offers Securities for issue or sale under a Prospectus or Offer Document, the Company must hold—

- (a) all application money received from people applying for Securities under the Prospectus or Offer Document; and
- (b) all other money paid by them on account of the Securities before they are issued or transferred,

in trust under this section for the applicants until—

- (i) if it is not intended that the Company making the offer will be Listed—
  - A. the Securities are issued or transferred;
  - B. the money is returned to the applicants; or

- (ii) if it is intended that the Company making the offer will be Listed or the Company making the offer is a Listed Company—
  - A. the Company has applied for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on a Securities Exchange and the Securities have been accepted for quotation by a Securities Exchange; and
  - B. the Securities are issued or transferred or the money is returned to the applicants.

(2) If it is not intended that the Company making the offer will be Listed and the application money needs to be returned to an applicant, the person must return the money as soon as practicable.

(3) If—

- (a) it is intended that the Company making the offer will be Listed or the Company is a Listed Company; and
- (b) either—
  - (i) an application for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on Securities Exchange is not made within 28 days of the issue date of the Registered Prospectus or Registered Offer Document; or
  - (ii) the Company making the offer is not Listed and/or the Securities offered by the Company under the Registered Prospectus or Offer Document are not accepted for quotation by a Securities Exchange within 3 months of the issue date of the Registered Prospectus or Registered Offer Document;
- (c) the application money must be returned to an applicant within 7 days of the end of that 3 month period.

*Disclaimers in Prospectus and Offer Document*

**289.**—(1) Each Registered Prospectus and Registered Offer Document must contain the following statement if registered by the Reserve Bank—

**DISCLAIMER—RESERVE BANK**

This document has been registered with the Reserve Bank in accordance with the Companies Act 2015 (Fiji).

The Reserve Bank accepts no liability for any statement contained or information omitted from this document.

(2) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer intends to apply to be Listed but has not done so—

**DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]**

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document has not applied to be listed on the [insert short name of Securities Exchange] as at the issue date of this document.

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

(3) The Company must apply to be listed on a Securities Exchange within 28 days of the issue date of the Registered Prospectus or Registered Offer Document.

(4) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer has applied to be Listed and the Securities Exchange has provided a written acknowledgment that the Company complies with all requirements for listing on a Securities Exchange—

**DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]**

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document has applied to be listed on the [insert short name of Securities Exchange] and has complied with all requirements for listing on the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

(5) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer has applied to be Listed and the Securities offered by the Company have been accepted for quotation by a Securities Exchange—

**DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]**

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document (“Company”) has applied to be listed on the [insert short name of Securities Exchange] and has complied with all requirements for listing on the [insert short name of Securities Exchange]. The Company’s Securities have been accepted for quotation by the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

(6) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer is a Listed Company and the Company has applied for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on a Securities Exchange and the Securities have not yet been accepted for quotation by the Securities Exchange—

**DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]**

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document (“Company”) is listed on the [insert short name of Securities Exchange]. The Company has applied for quotation of the Securities offered under this document to be quoted on the [insert short name of Securities Exchange] but the Securities have not yet been accepted for quotation by the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

(7) The Company must apply for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on Securities Exchange within 28 days of the issue date of the Registered Prospectus or Registered Offer Document, and each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer is a Listed Company and the Company has applied for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on a Securities Exchange and the Securities have been accepted for quotation by a Securities Exchange—

**DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]**

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document (“Company”) is listed on the [insert short name of Securities Exchange]. The Securities offered under this document have been accepted for quotation by the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

*Registration of Prospectus or Offer Document*

**290.**—(1) Subject to subsections (2) and (3), the Reserve Bank may register a Prospectus or Offer Document delivered to the Reserve Bank in accordance with sections 284 and 286 respectively.

(2) The Reserve Bank may refuse to register a Prospectus or Offer Document if—

(a) it does not comply with this Act or any regulations made under this Act;

(b) it contains any misdescription, error or a matter that is not clearly legible or is contrary to law; or

(c) the Prescribed Amount payable on registration is not paid.

(3) The Reserve Bank must refuse to register a Prospectus of Offer Document if the Reserve Bank is of the opinion that the Prospectus or Offer Document—

(a) does not contain all information reasonably necessary for the investor to understand the nature and the terms of the offer; or

(b) contains a statement that is false or misleading in a material way particular or omits any material particular.

(4) Upon registration of a Prospectus or Offer Document pursuant to this section, the Reserve Bank must give a certificate of that registration, and the certificate must be conclusive evidence that the Prospectus has been registered.

*Statements by experts*

**291.—**(1) A Prospectus or Offer Document containing a statement purporting to be made by an expert must not be registered by the Reserve Bank unless—

(a) the expert has given and has not, before delivery of a copy of the Prospectus or Offer Document for registration in accordance with section 290, withdrawn his or her written consent to the distribution of the Prospectus or Offer Document with the statement included in the form and context in which it is included;

(b) a statement that the expert has given and has not withdrawn his or her consent as aforesaid appears in the Prospectus or Registered Prospectus or Registered Offer Document;

(c) a statement of the expert's qualifications appears in the Prospectus or Offer Document; and

(d) if the statement by the expert was made more than 4 months before the date of delivery of the Prospectus or Offer Document for registration in accordance with section 290, a supplementary statement on the same matter made by the same or another expert less than 4 months before that date appears in the Prospectus or Offer Document.

(2) A Prospectus or Offer Document must not contain a statement by a person as an expert where the person is a Director, Officer, or employee of, or professional adviser to, the Company issuing the Prospectus or Offer Document.

(3) Where under section 259(1)(e), a supplementary statement by an expert is required to appear in a Prospectus or Offer Document—

(a) the supplementary statement must specifically affirm, deny, or qualify all assertions of fact contained in the original statement; and

- (b) if in the opinion of the expert making the supplementary statement, any opinions expressed in the original statement require further comment because of any such denial or qualification of any assertions of fact, or for any other reason, the supplementary statement must contain such comments.

*Amendment of Registered Prospectus or Registered Offer Document*

**292.** A Registered Prospectus or Registered Offer Document may not be amended.

*Secondary sales*

**293.**—(1) If a person seeks to offer Shares held by it in a Company (“Secondary Seller”), the provisions of this Part apply as if—

- (a) all references to the Company issuing the Prospectus or Offer Document (other than Schedules 3 and 4) are read as references to the Secondary Seller; and
- (b) all references to the Company issuing the Prospectus or Offer Document in Schedules 3 and 4 are read as references to the Company in whom Shares are being offered.

(2) If the Government or a Government Entity seeks to offer Shares held by it in another Company (“Government Seller”), the provisions of this Part apply as if—

- (a) all references to the Company issuing the Prospectus or Offer Document (other than Schedules 3 and 4) are read as references to the Government Seller; and
- (b) all references to the Company issuing the Prospectus or Offer Document in Schedules 3 and 4 are read as references to the Company in whom Shares are being offered.

## PART 27—DEBENTURES

*Division 1—Requirement for Trust Deed and Trustee*

*Prohibition on issue*

**294.** A person cannot—

- (a) make an offer of Debentures in Fiji that needs disclosure to investors under this Act;
- (b) make an offer of Debentures that does not need disclosure to investors under this Act; or
- (c) issue Debentures in Fiji or elsewhere,

other than in accordance with this Act.

*Requirement for trust deed and trustee***295.—**(1) Before a Public Company—

- (a) makes an offer of Debentures in Fiji that needs disclosure to investors under this Act;
- (b) makes an offer of Debentures that does not need disclosure to investors under this Act; or
- (c) issues Debentures in Fiji or elsewhere,

regardless of where any resulting issue, sale or transfer occurs, the Public Company must enter into a trust deed that complies with section 296 and appoint a trustee that complies with section 297.

(2) The Public Company may revoke the trust deed after it has repaid all amounts payable under the Debentures in accordance with the Debentures' terms and the trust deed.

*Trust deed*

**296.** The trust deed must provide that the following are held in trust by the trustee for the benefit of the Debenture Holders—

- (a) the right to enforce the borrower's duty to repay;
- (b) any Charge or security for repayment;
- (c) the right to enforce any other duty that the borrower and any guarantor have under the—
  - (i) terms of the Debentures; or
  - (ii) provisions of the trust deed or this Part.

*Who can be a trustee***297.—**(1) The trustee must be—

- (a) a trustee Corporation registered under the Trustee Corporations Act (Cap. 66);
- (b) a Public Company, all of whose Shares are held beneficially by a trustee Corporation registered under the Trustee Corporations Act (Cap. 66); or
- (c) a Public Company approved by the Registrar under section 298.

(2) A person may only be appointed as trustee (except to the extent provided for by section 298) if the appointment will not result in a conflict of interest or duty.

(3) Subsection (2) is not intended to affect any rule of law or equity.

*The Registrar may approve Public Company to be trustee*

**298.**—(1) The Registrar may approve a Public Company in writing to be a trustee for the purposes of section 297(1)(c), and the approval may allow the Public Company to act as trustee—

- (a) in any circumstance;
- (b) in relation to a particular borrower or particular class of borrower; or
- (c) in relation to a particular trust deed,

and may be given subject to any conditions imposed by the Registrar.

- (2) The Registrar must publish notice of the approval in the *Gazette*.

*Existing trustee continues to act until new trustee takes office*

**299.**—(1) An existing trustee continues to act as the trustee until a new trustee is appointed and has taken office as trustee, despite any rule of law or equity to the contrary.

- (2) This section applies even if the existing trustee resigns.

*Replacement of trustee*

**300.**—(1) In addition to any other power of appointment under the terms of the Debentures or provisions of the trust deed, the borrower may appoint a Company that is related to the existing trustee as trustee in place of the existing trustee if—

- (a) the Company can be a trustee under section 297; and
- (b) the existing trustee consents in writing to the appointment.

(2) The appointment in subsection (1) has effect despite any term of the Debentures or provision of the trust deed.

- (3) The Court may—

- (a) appoint a person who may be a trustee under section 297 as trustee on the application of the borrower, a Debenture Holder or the Registrar if—
  - (i) a trustee has not been validly appointed; or
  - (ii) the trustee has ceased to exist; or
- (b) terminate the existing trustee's appointment and appoint a person who may be a trustee under section 297 as trustee in the existing trustee's place on the application of the borrower, the existing trustee, a Debenture Holder or the Registrar if the existing trustee—
  - (i) cannot be trustee under section 297; or
  - (ii) fails, or refuses, to act.



*Division 2—Duties of Borrower**Duties of borrower*

**301.** A borrower that is required to enter into a trust deed under section 296 has the duties imposed by this Division.

*General duties*

**302.** The borrower must—

- (a) carry on and conduct its business in a proper and efficient manner;
- (b) provide a copy of the trust deed to a Debenture Holder or the trustee if they request a copy; and
- (c) make all of its Financial Records available for inspection by—
  - (i) the trustee;
  - (ii) an Officer or employee of the trustee authorised by the trustee to carry out the inspection; or
  - (iii) an Auditor appointed by the trustee to carry out the inspection,

and give them any information, explanation or other assistance that they require about matters relating to those records.

*Duty to notify the Registrar of information related to trustee*

**303.** Within 14 days after the trustee is appointed or there is any change in relation to the trustee or the Debentures, the borrower must Lodge a notice in the Prescribed Form with the Registrar.

*Register relating to trustees for Debenture Holders*

**304.—**(1) The Registrar must establish and maintain a register relating to trustees for Debenture Holders.

(2) A person may inspect the register, and may make copies of, or take extracts from, the register upon payment of a fee for the Prescribed Amount.

(3) Any disclosure necessary for the purposes of this section is authorised by this section.

*Duty to replace trustee*

**305.** The borrower must take all reasonable steps to replace the trustee under section 300 as soon as practicable after the borrower becomes aware that the trustee—

- (a) has ceased to exist;
- (b) has not been validly appointed;
- (c) cannot be a trustee under section 297; or
- (d) has failed or refused to act as trustee.

*Duty to inform trustee about Charges*

**306.** If the borrower creates a Charge, it must give the trustee written details of the Charge within 21 days after it is created.

*Duty to give trustee and the Registrar quarterly reports*

**307.—**(1) Within 28 days after the end of each quarter, the borrower must—

(a) give the trustee a quarterly report that sets out the information required by subsection (3); and

(b) Lodge a copy of the report with the Registrar.

(2) The first quarter is the period of 3 months ending on a day fixed by the borrower, by written notice to the trustee.

(3) The day must be less than 6 months after the first issue of a Debenture under the trust deed.

(4) Each of the subsequent quarters is a period of 3 months.

(5) The report for a quarter must include details of—

(a) any failure by the borrower and each guarantor to comply with the terms of the Debentures or the provisions of the trust deed or this Part during the quarter;

(b) any event that has happened during the quarter that has caused, or could cause, one or more of the following and details of the amount payable—

(i) any amount deposited or lent under the Debentures to become immediately payable;

(ii) the Debentures to become immediately enforceable;

(iii) any other right or remedy under the terms of the Debenture or provisions of the trust deed to become immediately enforceable;

(c) any circumstances that have occurred during the quarter that materially prejudices—

(i) the borrower, any of its Subsidiaries, or any of the guarantors; or

(ii) any security or Charge included in or created by the Debentures or the trust deed; and

(iii) details of the amount secured;

(d) any substantial change in the nature of the business of the borrower, any of its Subsidiaries, or any of the guarantors that has occurred during the quarter;

(e) any of the following events that happened in the quarter—

(i) the appointment of a guarantor;

- (ii) the cessation of liability of a guarantor body for the payment of the whole or part of the money for which it was liable under the guarantee;
  - (iii) a change of name of a guarantor (if this happens, the report must also disclose the guarantor's new name);
- (f) the following, if the borrower has deposited money with, or lent money to, a Related Body Corporate during the quarter—
  - (i) the total of the money deposited with, or lent to, the Related Body Corporate during the quarter; and
  - (ii) the total amount of money owing to the borrower at the end of the quarter in respect of the deposits or loans to the Related Body Corporate; and
- (g) if the borrower has assumed a liability of a Related Body Corporate during the quarter, details of the extent of the liability assumed during the quarter and the extent of the liability as at the end of the quarter.

(6) The report must be made in accordance with a resolution of the Directors and specify the date on which the report is made.

#### *Exceptions*

**308.** Sections 306 and 307 do not apply in respect of the borrower while a Receiver or Manager, of Property of the borrower has been appointed and has not ceased to act under that appointment.

### *Division 3—Duties of Guarantor*

#### *Duties of guarantor*

**309.** If a borrower is required to enter into a trust deed under section 296 in relation to Debentures, a guarantor in respect of the Debentures has the duties imposed by this Division.

#### *General duties*

**310.** The guarantor must—

- (a) carry on and conduct its business in a proper and efficient manner; and
- (b) make all of its Financial Records available for inspection by—
  - (i) the trustee;
  - (ii) an Officer or employee of the trustee authorised by the trustee to carry out the inspection; or
  - (iii) an Auditor appointed by the trustee to carry out the inspection,

and give them any information, explanation or other assistance that they require about matters relating to those records.

*Duty to inform trustee about Charges*

**311.** If the guarantor creates a Charge, it must give the trustee written details of the Charge within 21 days after it is created.

*Exceptions*

**312.** Section 311 does not apply in respect of the guarantor while a Receiver or Manager, of Property of the guarantor has been appointed and has not ceased to act under that appointment.

*Division 4—Trustee**Trustee's duties*

**313.** The trustee of a trust deed entered into under section 296 must—

- (a) exercise reasonable diligence to ascertain whether the Property of the borrower and of each guarantor that is or should be available (whether by way of security or otherwise) will be sufficient to repay the amount deposited or lent when it becomes due;
- (b) exercise reasonable diligence to ascertain whether the borrower or any guarantor has committed any breach of—
  - (i) the terms of the Debentures; or
  - (ii) the provisions of the trust deed or this Part;
- (c) do everything in its power to ensure that the borrower or a guarantor remedies any breach;
- (d) notify the Registrar as soon as practicable if the borrower or guarantor has not complied with this Part;
- (e) give the Debenture Holders a statement explaining the effect of any proposal that the borrower submits to the Debenture Holders before any meeting called in accordance with this Part;
- (f) comply with any directions given to it at a Debenture Holders' meeting unless the trustee—
  - (i) is of the opinion that the direction is inconsistent with the terms of the Debentures or the provisions of the trust deed or this Act or is otherwise objectionable; and
  - (ii) has either obtained, or is in the process of obtaining, an order from the Court under section 320 setting aside or varying the direction; and
- (g) apply to the Court for an order under section 321 if the borrower requests it to do so.

*Exemptions and indemnifications of trustee from liability*

**314.** A term of a Debenture, provision of a trust deed or a term of a contract with Debenture Holders secured by a trust deed, is void in so far as the term or provision would have the effect of—

- (a) exempting a trustee from liability for breach of section 313; or
- (b) indemnifying the trustee against that liability.

*Indemnity*

**315.** The trustee is not liable for anything done or omitted to be done in accordance with a direction given to it by the Debenture Holders at any meeting called under this Part.

*Division 5—Meetings of Debenture Holders**Borrower's duty to call meeting*

**316.—**(1) The borrower must call a meeting of Debenture Holders if—

- (a) Debenture Holders who together hold 10% or more of the nominal value of the issued Debentures to which the trust relates direct the borrower to do so;
- (b) the direction is given to the borrower in writing at its Registered Office; and
- (c) the purpose of the meeting is to—
  - (i) consider the Financial Statements that were laid before the last AGM of the borrower; or
  - (ii) give the trustee directions in relation to the exercise of any of its powers.

(2) If the borrower is required to call a meeting, it must give notice of the time and place of the meeting to—

- (a) the trustee;
- (b) the borrower's Auditor; and
- (c) each of the Debenture Holders whose names are entered on the register of Debenture Holders.

(3) Notice to joint holders of a Debenture must be given to the joint holder named first in the register of Debenture Holders.

(4) The borrower may give the notice to a Debenture Holder—

- (a) personally;
- (b) by sending it by post to the address for the Debenture Holder in the register of Debenture Holders;

- (c) by sending it to the fax number or electronic address (if any) nominated by the Debenture Holder; or
- (d) by any other means that the trust deed or the terms of the Debentures permit.

(5) A notice of meeting sent to a Debenture Holder is taken to be given—

- (a) 3 days after it is posted, if it is posted; or
- (b) on the Business Day after it is sent, if it is sent by fax or other electronic means,

unless the trust deed or the terms of the Debentures provide otherwise.

*Trustee's power to call meeting*

**317.**—(1) If the borrower or a guarantor fails to remedy any breach of the terms of the Debentures or provisions of the trust deed or this Part when required by the trustee, the trustee may—

- (a) call a meeting of Debenture Holders;
- (b) inform the Debenture Holders of the failure at the meeting;
- (c) submit proposals for protection of the Debenture Holders' interests to the meeting; and
- (d) ask for directions from the Debenture Holders in relation to the matter.

(2) The trustee may appoint a person to chair a meeting of Debenture Holders called under subsection (1), and if the trustee does not exercise this power, the Debenture Holders present at the meeting may appoint a person to chair the meeting.

*Court may order meeting*

**318.**—(1) Without limiting section 320 or 321, the Court may make an order under either of those sections for a meeting of all or any of the Debenture Holders to be held to give directions to the trustee, and the order may direct the trustee to—

- (a) place before the Debenture Holders any information concerning their interests;
- (b) place before the Debenture Holders any proposal to protect their interests that the Court directs or the trustee considers appropriate; and
- (c) obtain the Debenture Holders' directions concerning the protection of their interests.

(2) The meeting is to be held and conducted in the manner the Court directs.

*Division 6—Civil Liability**Civil liability for contravening this Part*

**319.**—(1) A person who suffers loss or damage because a person contravenes a provision of this Part may recover the amount of the loss or damage from—

- (a) the person who contravened the provision; or
- (b) a person involved in the contravention.

(2) An action under subsection (1) may begin at any time within 5 years after the day on which the cause of action arose.

(3) This Part does not affect any liability that a person has under any other law.

*Division 7—Powers and Directions**General power to give directions and determine questions*

**320.**—(1) If the trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of the Debenture Holders, the Court may give any direction and make any declaration or determination in relation to the matter that the Court considers appropriate.

(2) The Court may also make ancillary or consequential orders.

*Specific Court powers*

**321.**—(1) If the trustee or the Registrar applies to the Court, the Court may make any or all of the following orders—

- (a) an order staying an action or other civil proceedings before a Court by or against the borrower or a guarantor body;
- (b) an order restraining the borrower from paying any money to the Debenture Holders or any holders of any other class of Debentures;
- (c) an order that any security for the Debentures be enforceable immediately or at the time the Court directs (even if the Debentures are irredeemable or redeemable only on the happening of a contingency);
- (d) an order appointing a Receiver of any Property constituting security for the Debentures;
- (e) an order restricting advertising by the borrower for deposits or loans;
- (f) an order restricting borrowing by the borrower; or
- (g) any other order that the Court considers appropriate to protect the interests of existing or prospective Debenture Holders.

(2) In deciding whether to make an order under subsection (1), the Court must have regard to—

- (a) the ability of the borrower and each guarantor to repay the amount deposited or lent as and when it becomes due;

- (b) the interests of the borrower's members and creditors; and
- (c) the interests of the Members of each of the guarantors.

## PART 28—MANAGED INVESTMENT SCHEMES

### *Division 1—Approval of Scheme*

#### *Approval in principle by the Reserve Bank*

**322.**—(1) A Managed Investment Scheme may not be established or operated in Fiji without the prior approval of the Reserve Bank under this Act, which if granted, must be notified in the *Gazette*.

(2) In deciding whether or not to grant approval under subsection (1), the Reserve Bank may have regard to any factors which it considers to be material.

(3) An application for approval by a Managed Investment Scheme referred to in this section must be made in the Prescribed Form.

(4) Upon an application being made in writing and Lodged with the Reserve Bank, the Reserve Bank may make an order exempting a scheme or class of schemes from complying with certain requirements for registration as a Managed Investment Scheme on such conditions as the Reserve Bank may impose and for such a period as the Reserve Bank may specify.

#### *When a Managed Investment Scheme may be approved*

**323.**—(1) Subject to subsection (2), a Managed Investment Scheme may be approved by the Reserve Bank provided that—

- (a) it has more than 20 Members;
- (b) it was promoted by a person, or Related Body Corporate of a person, who was, when the scheme was promoted, in the business of promoting Managed Investment Schemes; or
- (c) a determination under subsection (2) is in force in relation to the scheme and the total number of Members of all of the schemes to which the determination relates exceeds 20.

(2) The Reserve Bank may, in writing, determine that a number of Managed Investment Schemes are closely related and that each of them has to be approved at any time when the total number of Members of all of the schemes exceeds 20.

(3) Pursuant to subsection (2), the Reserve Bank must give written notice of the determination to the Manager of each of the schemes.

(4) For the purpose of this section, when determining how many Members a scheme has—

- (a) joint holders of an interest in the scheme count as a single Member; and



- (b) an interest in the scheme held on trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) if—
  - (i) the beneficiary is presently entitled to a share of the trust estate or of the income of the trust estate; or
  - (ii) the beneficiary is, individually or together with other beneficiaries, in a position to control the Trustee.

*Division 2—Appointment and Removal of Trustee and Manager of Managed Investment Scheme*

*Managed Investment Scheme to have Manager and Trustee*

**324.**—(1) There must be a Manager and a Trustee of every Managed Investment Scheme.

(2) Subject to the provisions of this Act, the Public Company that is the Manager of any Managed Investment Scheme must have—

- (a) vested in it the powers of management of the investments and other Property that are subject to the trust governing that Managed Investment Scheme;
- (b) the function (whether as principal or by an agent) of issuing or offering Interests in the Managed Investment Scheme to the public for subscription or purchase, or of inviting the public to subscribe for or purchase such Interests, or both of those functions; and
- (c) the same liability for its acts and omissions in the exercise of its powers and functions as Manager of the Managed Investment Scheme as it would if it exercised those powers and functions as a Trustee.

(3) Subject to the provisions of this Act, the Trustee of a Managed Investment Scheme must have vested in it, the investments and other Property that are for the time being subject to the Managed Investment Scheme, and the Trustee must hold the register of Members, which must be available for inspection at all reasonable times on payment of a fee for the Prescribed Amount.

*Restrictions as to Trustee and Manager*

**325.**—(1) Every Trustee and Manager of a Managed Investment Scheme must—

- (a) be a Public Company;
- (b) hold a Securities Industry Licence which authorises the person to act as a Trustee or Manager of a Managed Investment Scheme; and
- (c) give a bond to the Reserve Bank for the Prescribed Amount as security for the fulfilment of their duties and obligations under the Managed Investment Scheme (“Bond”).

(2) The Bond is recoverable in full as a debt due by the Trustee or Manager unless the Trustee or Manager can prove performance of all their duties and obligations under the Managed Investment Scheme to the satisfaction of the Reserve Bank in its sole discretion.

(3) Where a Bond is recovered by the Reserve Bank, the full amount of the Bond will be held on trust for the Members of the Managed Investment Scheme and applied by the Reserve Bank towards the discharge of the Trustee and/or Manager's duties and obligations under the Managed Investment Scheme with the balance being refunded to the Trustee or Manager which paid the Bond.

*Nomination of Company by Trustee*

**326.**—(1) A Public Company must not be nominated by the Trustee to be vested with the investments and other Property of the Managed Investment Scheme unless the Trustee is the registered holder or beneficial owner of all the Shares in that Public Company.

(2) Upon the nomination of any such Public Company by the Trustee, the Trustee, in addition to its own obligations as Trustee in relation to the Managed Investment Scheme, will be jointly and severally liable with the nominated Public Company for the due and faithful performance and observance by the nominated Public Company of all the duties and obligations imposed on the nominated Public Company in relation to the Managed Investment Scheme either by this Act or any other written law.

*Removal of Trustee*

**327.**—(1) Notwithstanding the provisions of any other written law or anything to the contrary in the Scheme Deed governing any Managed Investment Scheme, the Manager of the Managed Investment Scheme must not have power to remove the Trustee but may apply to the Court for an order providing for the removal of that Trustee.

(2) The Reserve Bank may remove the Trustee of any Managed Investment Scheme by written notice to the Trustee, Manager and Members of the Managed Investment Scheme.

(3) The Manager of the Managed Investment Scheme must propose a replacement Trustee and call a General Meeting to replace the Trustee, within 14 days after becoming aware that —

- (a) the Trustee has ceased to exist;
- (b) the Trustee has not been validly appointed;
- (c) the Trustee is not eligible to be appointed or to act as Trustee under section 325;
- (d) the Trustee has failed or refused to act as Trustee in accordance with the provisions or covenants of the Scheme Deed or the provisions of this Act;
- (e) a Receiver or Manager is appointed over the whole or a substantial part of the assets or undertaking of the existing Trustee and has not ceased to act under that appointment, or an application is presented for the winding

up of the existing Trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing Trustee becomes or is declared to be Insolvent);

- (f) the Trustee is under investigation for conduct that contravenes the Trustee Act or any voter Fiji legislation relevant to its role as trustee; or
- (g) the Reserve Bank removes the Trustee of a Managed Investment Scheme under this section.

(4) At a General Meeting called by a Manager under this section, the Members of the Managed Investment Scheme holding at least 50% of the value of the Interests in the Managed Investment Scheme who attend the meeting and vote on the resolution must pass a resolution to appoint a replacement Trustee.

(5) Notwithstanding anything to the contrary in the Scheme Deed governing the Managed Investment Scheme, a Trustee of a Managed Investment Scheme may not be discharged or retire from that trust until another Trustee has been appointed to and assumed that office in accordance with the provisions of the Scheme Deed or this Act and the Trustee has notified the Reserve Bank of the change in Trustee in the Prescribed Form.

#### *Removal of Manager*

**328.**—(1) The Court may, on the application of the Trustee of a Managed Investment Scheme, Members of the Managed Investment Scheme holding at least 50% of the value of the Interests in the Managed Investment Scheme, or the Reserve Bank, orders that the Manager be removed from that office.

(2) The Trustee of the Managed Investment Scheme must propose a replacement Manager and call a General Meeting to replace the Manager, within 14 days after becoming aware that—

- (a) the Manager has ceased to exist;
- (b) the Manager has not been validly appointed;
- (c) the Manager is not eligible to be appointed or to act as Manager under section 325;
- (d) the Manager has failed or refused to act as Manager in accordance with the provisions or covenants of the Scheme Deed or the provisions of this Act; or
- (e) the Court removes the Manager of a Managed Investment Scheme under this section.

(3) At a General Meeting called by a Trustee under this section, the Members of the Managed Investment Scheme holding at least 50% of the value of the Interests in the Managed Investment Scheme who attend the meeting and vote on the resolution must pass a resolution to appoint a replacement Manager.

(4) Notwithstanding anything to the contrary in the Scheme Deed governing the Managed Investment Scheme, a Manager of a Managed Investment Scheme may not be discharged or retire from that trust until another Manager has been appointed to and assumed that office in accordance with the provisions of the Scheme Deed or this Act and the Manager has notified the Reserve Bank of the change in Manager in the Prescribed Form.

### *Division 3—Scheme Deed*

#### *Approval of Scheme Deed*

**329.**—(1) The Manager of each Managed Investment Scheme must submit the Scheme Deed for the Managed Investment Scheme and every amendment of that deed to the Reserve Bank for approval within 14 days of the execution of the deed or amendment to the deed.

(2) Every Scheme Deed must—

- (a) be in writing and be dated;
- (b) be approved by the Reserve Bank; and
- (c) include provisions which enable—
  - (i) the Members of the Managed Investment Scheme to amend the Scheme Deed;
  - (ii) the Members of the Managed Investment Scheme to withdraw from the scheme; and
  - (iii) the Managed Investment Scheme to be wound up.

(3) The Reserve Bank may, on an application for approval of a Scheme Deed—

- (a) approve the Scheme Deed;
- (b) approve the Scheme Deed with such revisions or subject to such terms and conditions as it thinks fit; or
- (c) refuse to approve the Scheme Deed.

(4) The Reserve Bank must refuse to approve a Scheme Deed if—

- (a) it appears to the Reserve Bank that the Scheme Deed does not comply with this Act;
- (b) the Reserve Bank has not approved a Prospectus or Offer Document for the offer of interests in the Managed Investment Scheme or the Registered Prospectus or the Registered Offer Document for the offer of interests in the Managed Investment Scheme is no longer valid; or
- (c) the Managed Investment Scheme does not have a Trustee and Manager as required under section 325.

*Copy of Scheme Deed to be Lodged with Registrar*

**330.**—(1) The Manager of each Managed Investment Scheme must submit the Scheme Deed for the Managed Investment Scheme and every amendment of that deed accompanied by a certificate from the Reserve Bank stating that the Scheme Deed has been approved under section 329 (“Approved Scheme Deed”) to the Registrar for registration within 7 days of the approval of the deed or amendment by the Reserve Bank.

(2) The Registrar will register all Approved Scheme Deeds submitted for registration and will allocate an identifying number to the Managed Investment Scheme which will be known as the scheme number.

*Implied provisions in Scheme Deed*

**331.**—(1) The following provisions must be included in every Scheme Deed for a Managed Investment Scheme, notwithstanding anything to the contrary in the Scheme Deed—

- (a) that the Manager of the Managed Investment Scheme must—
  - (i) use its best endeavours to ensure that the Managed Investment Scheme is carried on in a proper and efficient manner;
  - (ii) use due diligence and vigilance in the exercise and performance of its functions, powers and duties as a Manager;
  - (iii) account to the Members of the Managed Investment Scheme for all money that it receives on behalf of the scheme;
  - (iv) not pay out or apply any money belonging to the scheme for any purpose that is not directed by or authorised in the Scheme Deed;
  - (v) make available upon demand to the Trustee or to its nominated Public Company for inspection, all of the Manager’s Financial Records relating to the Managed Investment Scheme;
  - (vi) give to the Trustee or to its nominated Public Company, such information as that Trustee or nominated Public Company requires with respect to all matters relating to the Managed Investment Scheme or to any Property of the Manager (whether acquired before or after the date of the Scheme Deed), or otherwise relating to the Affairs of the Manager; and
  - (vii) give to the Members of the Managed Investment Scheme, in a General Meeting, such oral or written information relating to the affairs of the Managed Investment Scheme as any Member of the Managed Investment Scheme has given it reasonable notice to supply;

- (b) that the Trustee of the Managed Investment Scheme must—
- (i) not act on any direction of the Manager to acquire any Property for the Managed Investment Scheme or dispose of any Property of the Managed Investment Scheme if, in the Trustee's opinion conveyed in writing to the Manager, the proposed acquisition or disposal is manifestly not in the interests of the Members of the Managed Investment Scheme, and the Trustee must not be liable to the Members of the Managed Investment Scheme or to the Manager for so refusing to act on any direction of the Manager;
  - (ii) use due diligence and vigilance in the exercise and performance of its functions, powers and duties as a Trustee; and
  - (iii) give to the Members of the Managed Investment Scheme, in a General Meeting, such oral or written information relating to the affairs of the Managed Investment Scheme as any Member of the Managed Investment Scheme has given it reasonable notice to supply; and
- (c) whether the Manager has an obligation to buy back Interests in the Managed Investment Scheme if requested by a Member of the Managed Investment Scheme to do so, and the manner in which and the conditions on which Interests in the Managed Investment Scheme are to be bought back, including the method of calculating the minimum price at which Interests in the Managed Investment Scheme are to be bought back.

(2) Each provision specified in subsection (1) is deemed to be included in a Scheme Deed to the extent they are not expressly included in the Scheme Deed and are enforceable by the Trustee or any Member of the Managed Investment Scheme.

*Scheme Deed not to exempt Trustee or Manager from liability*

**332.**—(1) Any provision in a Scheme Deed governing a Managed Investment Scheme or in any other instrument is void so far as it would have the effect of—

- (a) exempting the Trustee or Manager or any Director or Officer of the Trustee or Manager from liability for breach of trust where that person fails to show the degree of care and diligence required in that capacity, having regard to the provisions of the Scheme Deed and the powers, authorities, or discretions conferred under the Scheme Deed; or
- (b) indemnifying the Trustee or Manager or any Director or Officer of the Trustee or Manager from any such liability.

*Division 4—General Provisions**Payment of subscription monies to Trustee*

**333.** The Manager of any Managed Investment Scheme must pay to the Trustee or its nominated Public Company all money received by that Manager or any agent of that Manager in respect of purchases of, or subscriptions for, Interests in that Managed Investment Scheme within 7 days of the Interests in the Managed Investment Scheme being issued.

*Obligations on Managed Investment Schemes other than under this Part*

**334.** Where a Managed Investment Scheme has an obligation under provisions of this Act (other than under this Part), the Manager of the Managed Investment Scheme is liable to meet those obligations.

**PART 29—MEETINGS OF MEMBERS OF MANAGED INVESTMENT SCHEMES***Division 1—Who May Call Meetings of Members**Calling of meetings of Members by Manager*

**335.** The Manager of a Managed Investment Scheme may call a meeting of the scheme's Members.

*Meeting of Members*

**336.—(1)** The Manager of a Managed Investment Scheme must call a General Meeting if—

- (a) Members of the Managed Investment Scheme holding at least 50% of the value of the Interests in the Managed Investment Scheme direct the borrower to do so;
- (b) the direction is given to the Manager in writing at its Registered Office; and
- (c) the purpose of the meeting is to—
  - (i) consider the Financial Statements that were laid before the last General Meeting; or
  - (ii) give the Manager or Trustee directions in relation to the exercise of any of their powers.

(2) If the Manager is required to call a meeting, it must give notice of the time and place of the meeting to—

- (a) the Trustee;
- (b) the Auditor of the Managed Investment Scheme; and
- (c) each of the Members of the Managed Investment Scheme whose names are entered on the register of Members of the Managed Investment Scheme.

(3) The Manager may give the notice to the Members of the Managed Investment Scheme—

- (a) personally;
- (b) by sending it by post to the address for the Members of the Managed Investment Scheme in the register of Members of the Managed Investment Scheme;
- (c) by sending it to the fax number or electronic address (if any) nominated by the Members of the Managed Investment Scheme; or
- (d) by any other means that the terms of the Scheme Deed permit.

(4) A notice of meeting sent to the Members of the Managed Investment Scheme is taken to be given—

- (a) 3 days after it is posted, if it is posted;
- (b) on the Business Day after it is sent, if it is sent by fax or other electronic means; or
- (c) unless the Scheme Deed provides otherwise.

(5) Where a General Meeting is held, the meeting must be under the chairpersonship of a nominee of the Trustee (unless the General Meeting is held to replace the Trustee in which the meeting must be under the chairpersonship of the Manager), and must be conducted in accordance with any provision in that connection in the Scheme Deed and otherwise as directed by the chairperson of the meeting.

(6) Members of the Managed Investment Scheme holding at least 50% of the value of the Interests in the Managed Investment Scheme who attend the meeting and vote on a resolution, must have the power by resolution to give such directions to the Trustee and/or the Manager of the Managed Investment Scheme as they think proper concerning the Managed Investment Scheme, being directions that are consistent with the provisions of the Scheme Deed and this Act.

(7) Where any direction is so given to the Trustee and/or Manager of a Managed Investment Scheme, the Trustee and/or Manager may comply with the direction, and must not be liable for anything done or omitted by it by reason of it following that advice or direction.

(8) In any case where the Trustee and/or Manager of a Managed Investment Scheme is of the opinion that any direction given to them at a General Meeting conflicts with the terms of the Scheme Deed or any written law, the Trustee and/or Manager may apply to the Court for directions in the matter, and the decision and order of the Court in relation to the direction must be final.



*Calling of meetings of Members by the Court*

**337.**—(1) The Court may order a meeting of the scheme's Members to be called if it is impracticable to call the meeting in any other way.

(2) The Court may make the order on application by—

- (a) any Manager; or
- (b) any Member who would be entitled to vote at the meeting.

*Division 2—How to Call Meetings of Members**Amount of notice of meetings*

**338.** At least 21 days' notice must be given of a meeting of the Members of a Managed Investment Scheme.

*Notice of meetings of Members to Members, Directors and Auditors*

**339.**—(1) Written notice of a meeting of a scheme's Members must be given individually to each Member entitled to vote at the meeting, each Director of the Manager and the Auditor of the Managed Investment Scheme and notice need only be given to one Member of a joint membership.

(2) Notice to joint members must be given to the joint member named first in the register of Members.

(3) The Manager may give the notice of meeting to a Member—

- (a) personally;
- (b) by sending it by post to the address for the member in the register of Members or the alternative address (if any) nominated by the Member;
- (c) by sending it to the fax number or electronic address (if any) nominated by the Member; or
- (d) by sending it to the Member by other electronic means (if any) nominated by the Member.

(4) If the Member nominates—

- (a) an electronic means (the “nominated notification means”) by which the Member may be notified that notices of meeting are available; and
- (b) an electronic means (the “nominated access means”) the Member may use to access notices of meeting,

the Manager may give the Member notice of the meeting by notifying the Member (using the nominated notification means)—

- (i) that the notice of meeting is available; and
- (ii) how the Member may use the nominated access means to access the notice of meeting.

(5) Subsection (4) does not limit subsection (3).

(6) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.

(7) A notice of meeting given to a member by notifying the Member in accordance with subsection (3)(d) is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.

*Auditor entitled to notice and other communications*

**340.** The Manager of a Managed Investment Scheme must give the Auditor of the Managed Investment Scheme—

- (a) notice of a meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to a meeting that a Member is entitled to receive.

*Contents of notice of meetings of Members*

**341.—**(1) A notice of a meeting of a scheme's Members must—

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held using technology, details of the technology used to facilitate the meeting and any access details and requirements);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting – set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy – contain a statement setting out the following information—
  - (i) that the Member has a right to appoint a proxy;
  - (ii) whether or not the proxy needs to be a Member of the Managed Investment Scheme; and
  - (iii) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

(2) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

*Division 3—Members Rights to put Resolutions*

*Members' resolutions*

**342.—**(1) Members with at least 10% of the votes that may be cast on the resolution, may give a Company notice of a resolution that they propose to move at a General Meeting.

(2) The notice must—

- (a) be in writing;
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members proposing to move the resolution.

(3) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

(4) The percentage of votes that Members have is to be worked out as at the midnight before the Members give the notice.

*Manager giving notice of Members' resolutions*

**343.**—(1) If a Manager has been given notice of a resolution under section 342, the resolution is to be considered at the next meeting of the scheme's Members that occurs more than 2 months after the notice is given.

(2) The Manager must give all its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(3) The Manager is responsible for the cost of giving Members notice of the resolution if the Manager receives the notice in time to send it out to Members with the notice of meeting.

(4) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Manager in giving Members notice of the resolution if the Manager does not receive the Members' notice in time to send it out with the notice of meeting.

(5) At a meeting of the scheme's Members, the Manager may resolve to meet the expenses itself out of the scheme's assets.

(6) The Manager need not give notice of the resolution—

- (a) if it is more than 1,000 words long or defamatory; or
- (b) if the Members making the request are to bear the expenses of sending the notice out – unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

*Members' statements to be distributed*

**344.**—(1) Members may request a Manager to give to all its Members a statement provided by the Members making the request about—

- (a) a resolution that is proposed to be moved at a meeting of the scheme's Members; or
- (b) any other matter that may be properly considered at a meeting of the scheme's Members.

(2) The request must be made by Members with at least 10% of the votes that may be cast on the resolution.

(3) The request must be—

- (a) in writing;
- (b) signed by the Members making the request; and
- (c) given to the Manager.

(4) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

(5) The percentage of votes that Members have is to be worked out as at the midnight before the request is given to the Manager.

(6) After receiving the request, the Manager must distribute to all its Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting of the scheme's Members.

(7) The Manager is responsible for the cost of making the distribution if the Manager receives the statement in time to send it out to Members with the notice of meeting.

(8) The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Manager in making the distribution if the Manager does not receive the statement in time to send it out with the notice of meeting.

(9) At a meeting of the scheme's Members, the Manager may resolve to meet the expenses itself out of the scheme's assets.

(10) The Company need not comply with the request—

- (a) if the statement is more than 1,000 words long or defamatory; or
- (b) if the Members making the request are responsible for the expenses of the distribution – unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

#### *Division 4—Holding Meetings of Members*

##### *Purpose*

**345.** A meeting of the scheme's Members must be held for a proper purpose.

##### *Time and place for meetings of Members*

**346.** A meeting of a scheme's Members must be held at a reasonable time and place.

##### *Use of technology*

**347.** A Manager may hold a meeting of the scheme's Members using any technology that gives the Members as a whole, a reasonable opportunity (including, but not limited to, technology which facilitates the use of two or more venues) to participate.

*Quorum*

**348.**—(1) The quorum for a meeting of a Company's Members is two Members, unless there is only one Member, when a quorum is that Member.

(2) The quorum must be present at all times during the meeting.

(3) In determining whether a quorum is present, count individuals attending as proxies or Company representatives, however, if—

- (a) a Member has appointed more than one proxy or representative, count only one of them; and
- (b) an individual is attending both as a Member and as a proxy or Company representative, count them only once.

(4) A meeting of the scheme's Members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting, is adjourned to the date, time and place the Manager specifies.

(5) If the Manager does not specify one or more of those things under subsection (4), the meeting is adjourned to—

- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

(5) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

*Chairing meetings of Members*

**349.**—(1) The Manager may elect an individual to chair meetings of the scheme's Members.

(2) The Members at a meeting of the scheme's Members must elect a Member present to chair the meeting (or part of it) if—

- (a) a chair has not previously been elected by the Manager to chair the meeting;  
or
- (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

(3) The chair must adjourn a meeting of the scheme's Members if the Members present with a majority of votes at the meeting agree or direct that the chair must do so.

*Auditor's right to be heard at scheme meetings*

**350.**—(1) An Auditor of the scheme is entitled to attend any meeting of the scheme.

(2) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.

(3) The Auditor is entitled to be heard even if—

(a) the Auditor retires at the meeting; or

(b) the meeting passes a resolution to remove the Auditor from office.

(4) The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the scheme's members.

*Adjourned meetings*

**351.** A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

*Division 5—Proxies and Company Representatives*

*Who can appoint a proxy*

**352.**—(1) A Member of a Managed Investment Scheme who is entitled to attend and cast a vote at a meeting of the scheme's Members may appoint a person (whether a Member or not) as the Member's proxy to attend and vote for the Member at the meeting.

(2) The person appointed as the Member's proxy may be an individual or a Company.

(3) The appointment may specify the proportion or number of votes that the proxy may exercise.

(4) Each Member may appoint a proxy.

(5) If a Member or a Public Company is entitled to cast two or more votes at the meeting, they may appoint two proxies.

(6) If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.

(7) Disregard any fractions of votes resulting from the application of subsections (3), (4), (5) or (6).

*Rights of proxies*

**353.**—(1) A proxy appointed to attend and vote for a Member has the same rights as the Member—

(a) to speak at the meeting; and

(b) to vote (but only to the extent allowed by the appointment).

(2) The Scheme Deed may provide that a proxy is not entitled to vote on a show of hands.

(3) Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

(4) The Scheme Deed may provide for the effect that a Member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the Member, however, if the Scheme Deed does not deal with this, a proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

*Appointing a proxy*

**354.**—(1) An appointment of a proxy is valid if it is signed by the Member of the Managed Investment Scheme making the appointment and contains the following information—

- (a) the Member's name and address;
- (b) the Managed Investment Scheme's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

(2) An undated appointment is taken to have been dated on the day it is given to the Company.

(3) An appointment may specify the way the proxy is to vote on a particular resolution and in cases where it does specify,—

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
- (b) if the proxy has two or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands.

(4) If a proxy is also a Member, this section does not affect the way that the person can cast any vote they hold as a Member.

(5) An appointment does not have to be witnessed.

(6) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

*Proxy documents*

**355.**—(1) For an appointment of a proxy for a meeting of a Company's Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting—

- (a) the proxy's appointment; or
- (b) if the appointment is signed by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.

(2) If a meeting of a scheme's Members has been adjourned, an appointment and any authority received by the Manager at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

(3) A Manager receives a document referred to in subsection (1) when the document is received at any of the following—

- (a) the Manager's Registered Office;
- (b) a fax number at the Manager's Registered Office; or

- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

(4) Any provision contained in the Scheme Deed shall be void in so far as it would have the effect 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 Manager or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at that meeting.

*Validity of proxy vote*

**356.**—(1) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

(2) Unless the Manager has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes—

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the proxy's appointment;
- (d) the Member revokes the authority under which the proxy was appointed by a third party; or
- (e) the Member transfers the Share in respect of which the proxy was given.

*Company representative*

**357.**—(1) A Company may appoint an individual as a representative to exercise all or any of the powers the Company may exercise.

(2) The appointment may set out restrictions on the representative's powers.

(3) If the appointment made under subsection (2) is to be by reference to a position held, the appointment must identify the position.

(4) A Company may appoint more than one representative but only one representative may exercise the body's powers at any one time.

(5) Unless otherwise specified in the appointment, the representative may exercise, on the Company's behalf, all of the powers that the Company could exercise at a meeting or in voting on a resolution.

*Division 6—Voting at Meetings of Members*

*Number of votes*

**358.**—(1) On a show of hands, each Member of a Managed Investment Scheme has one vote.

(2) On a poll, each Member of a Managed Investment Scheme has one vote for each dollar of the value of the total Interests they have in the scheme.



*Manager and Related Bodies Corporate cannot vote if interested in resolution*

**359.** The Manager of a Managed Investment Scheme and its Related Bodies Corporate are not entitled to vote on a resolution at a meeting of the scheme's Members if they have an interest in the resolution or matter other than as a Member, however, if the scheme is Listed, the Manager and its Related Bodies Corporate are entitled to vote their interest on resolutions to remove the Manager and choose a new Manager.

*How to work out the value of an Interest in a Managed Investment Scheme*

**360.** The value of an Interest in a Managed Investment Scheme is—

- (a) if it is quoted on a Securities Exchange – the last sale price on that market on the trading day immediately before the day on which the poll is taken;
- (b) if it is not quoted on a Securities Exchange and the scheme is liquid and has a withdrawal provision in its Scheme Deed – the amount that would be paid for the interest under that provision on the Business Day immediately before the day on which the poll is taken; or
- (c) in any other case – the amount that the Manager determines in writing to be the price that a willing but not anxious buyer would pay for the Interest if it was sold on the Business Day immediately before the day on which the poll is taken.

*Votes need not all be cast in the same way*

**361.** On a poll a person voting who is entitled to two or more votes—

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

*Matters on which a poll may be demanded*

**362.—**(1) Subject to subsection (2), a poll may be demanded on any resolution.

(2) A Scheme Deed may provide that a poll cannot be demanded on any resolution concerning—

- (a) the election of the chair of a meeting; or
- (b) the adjournment of a meeting.

(3) A demand for a poll may be withdrawn.

*When a poll is effectively demanded*

**363.—**(1) At a meeting of a scheme's Members, a poll may be demanded by—

- (a) at least five Members entitled to vote on the resolution;
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

(2) A Scheme Deed may provide that fewer Members or Members with a lesser percentage of votes may demand a poll.

(3) The poll may be demanded—

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

(4) The percentage of votes that Members have is to be worked out as at the midnight before the poll is demanded.

*Objections to right to vote*

**364.** A challenge to a right to vote at a meeting of a scheme's Members may only be made at the meeting and must be determined by the chair, whose decision is final.

*How voting is carried out*

**365.**—(1) A resolution put to the vote at a meeting of a scheme's Members must be decided on a show of hands unless a poll is demanded.

(2) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received.

(3) Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

*When and how polls must be taken*

**366.**—(1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

(2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

**PART 30—MINUTES OF MEETINGS OF MEMBERS OF A MANAGED INVESTMENT SCHEME**

*Minutes*

**367.**—(1) The Manager must keep minute books in which it records within 28 days, proceedings and resolutions of meetings of the scheme's Members.

(2) The Manager must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

(3) A Manager must keep its minute books at—

- (a) its Registered Office;
- (b) its principal place of business in Fiji; or
- (c) another place in Fiji approved by the Registrar.

(4) A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

*Members' access to minutes*

**368.**—(1) The Manager must ensure that the minute books for the meetings of the scheme's Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

(2) A Member of a Managed Investment Scheme may ask the Manager in writing for a copy of any minutes of a meeting of the scheme's Members or an extract of the minutes.

(3) If the Manager does not require the Member to pay for the copy, the Manager must send it—

- (a) within 14 days after the Member asks for it; or
- (b) within any longer period that the Registrar approves.

(4) If the Manager requires payment for the copy, the Manager must send it—

- (a) within 14 days after the Manager receives the payment; or
- (b) within any longer period that the Registrar approves.

(5) The amount of any payment the Manager requires cannot exceed the Prescribed Amount.

## PART 31—CHARGES

### *Division 1—Registration of Charges*

#### *Creation of a Charge*

**369.** A Charge is deemed to be created, in the case of an instrument creating a Charge, on the date of the execution of the instrument by or on behalf of the Company and, in the case of a Charge created by deposit of title deeds, on the date of the deposit of the title deeds.

#### *Charges required to be registered*

**370.**—(1) Subject to this section, the provisions of this Part relating to the giving of notice in relation to, the registration of, and the priorities of, Charges apply in relation to the following Charges (whether legal or equitable) on Property of a Company and do not apply in relation to any other Charge—

- (a) a Charge for the purpose of securing any issue of Debentures;
- (b) a Charge on uncalled share capital of the Company;
- (c) a Charge created or evidenced by an instrument which, if executed by an individual, would require registration as an instrument under the Bills of Sale Act (Cap. 225);
- (d) a Charge on real Property, wherever situate, or any interest therein;

- (e) a Charge on book debts of the Company, being a Charge on a debt due or to become due to the Company at some future time on account of or in connection with a profession, trade or business carried on by the Company, whether entered in a book or not, and includes a reference to a Charge on a future debt of the same nature although not incurred or owing at the time of the creation of the Charge, but does not include a reference to a Charge on a negotiable instrument or on a debt owing in respect of a mortgage, Charge or lease of land;
  - (f) a floating Charge on the whole or a part of the Property, business or undertaking of the Company;
  - (g) a Charge on Securities;
  - (h) a Charge on calls on Shares made but not paid;
  - (i) a Charge on a ship or any share in a ship;
  - (j) a Charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence to use a trade mark, or on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;
  - (k) a Charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, being a Charge on any article capable of complete transfer by delivery, whether at the time of the creation of the Charge or at some later time.
- (2) The provisions of this Part do not apply in relation to—
- (a) a Charge, or a lien over Property, arising by operation of law;
  - (b) a pledge of a personal chattel;
  - (c) a Charge created in relation to a negotiable instrument or a document of title to goods, being a Charge by way of pledge, deposit or trust receipt;
  - (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or
  - (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Fiji.

*Registration of Charges*

**371.**—(1) Where a Company creates a Charge, the Company must ensure that the following are Lodged within 42 days after the creation of the Charge—

- (a) a notice in the Prescribed Form setting out the following particulars—
  - (i) the name of the Company and the date of the creation of the Charge;
  - (ii) whether the Charge is a fixed Charge, a floating Charge or both a fixed and floating Charge;

- (iii) if the Charge is a floating Charge – whether there is any provision in the resolution or instrument creating or evidencing the Charge that prohibits or restricts the creation of subsequent Charges;
  - (iv) a short description of the liability (whether present or prospective) secured by the Charge;
  - (v) a short description of the Property charged;
  - (vi) whether the Charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
  - (vii) if the Charge is constituted by the issue of a Debenture or Debentures – the name of the trustee (if any) for Debenture Holders;
  - (viii) if the Charge is not constituted by the issue of a Debenture or Debentures or there is no trustee for Debenture Holders – the name of the Chargee;
  - (ix) such other information as is prescribed in the regulations made under this Act;
- (b) if, pursuant to a resolution or resolutions passed by the Company, the Company issues a series of Debentures constituting a Charge to the benefit of which all the holders of Debentures in the series are entitled in equal priority, and the Charge is evidenced only by the resolution or resolutions and the Debentures – a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first Debenture issued in the series and a statement in writing verifying the execution of that first Debenture; and
- (c) if, in a case to which paragraph (b) does not apply, the Charge was created or evidenced by an instrument or instruments—
- (i) the instrument or each of the instruments; or
  - (ii) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.
- (2) In a case to which section (1)(b) applies—
- (a) the Charge is, for the purposes of subsection (1), taken to be created when the first Debenture in the series of Debentures is issued; and
  - (b) if, after the issue of the first Debenture in the series, the Company passes a further resolution authorising the issue of Debentures in the series, the Company must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is Lodged within 42 days after the passing of that resolution.

(3) A notice in relation to a Charge, is not taken to have been Lodged unless the notice is accompanied by the documents specified in this section.

(4) In the case of a Charge created out of Fiji comprising Property situated outside Fiji, 42 days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Fiji, must be substituted for 42 days after the creation of the Charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar.

(5) Where a Charge is created in Fiji but comprises Property outside Fiji, the instrument creating or purporting to create a Charge or the copy of the instrument, as the case may be, may be Lodged for registration under this section, notwithstanding that further proceedings may be necessary to make the Charge valid or effectual according to the law of the place in which the Property is situated.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a Company, the deposit of the instrument for the purpose of securing an advance to the Company must not, for the purposes of this section, be treated as a Charge on those book debts.

(7) The holding of Debentures entitling the holder to a Charge on real Property must not, for the purposes of this section, be deemed to be an interest in real Property.

*Duty of Company to register Charges existing on Property acquired*

**372.**—(1) Where, on or after 1 January 1984, a Company acquires any Property which is subject to a Charge of any such kind as would, if it had been created by the Company after the acquisition of the Property, have been required to be registered under this Part, the Company must ensure the documents specified in section 371(1) are Lodged within 42 days after the date on which the acquisition is completed.

(2) If the Property is situated and the Charge was created outside Fiji, 42 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Fiji must be substituted for 42 days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

*Certificate of registration of Charge*

**373.**—(1) Where particulars of a Charge are entered in the Charges Register in accordance with this Part, the Registrar must, on request by any person, issue to that person a certificate setting out those particulars and stating the time and day when a notice in respect of the Charge containing those particulars was Lodged with the Registrar.

(2) A certificate issued under subsection (1) is *prima facie* evidence of the matters stated in the certificate.

*Variation of Charges*

**374.**—(1) Where, after a Charge on Property of a Company has been created, there is a variation in the terms of the Charge having the effect of—

- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the Charge; or
- (b) prohibiting or restricting the creation of subsequent Charges on the Property,

the Company must, within 42 days after the variation occurs, ensure that there is Lodged a notice in the Prescribed Form setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(2) Where a Charge created by a Company secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the Chargee to the Company in accordance with the terms of the Charge is not taken, for the purposes of this subsection, to be a variation in the terms of the Charge having the effect of increasing the amount of the Charge or the liabilities (whether present or prospective) secured by the Charge.

*Satisfaction of and release of Property from Charges*

**375.**—(1) Where, with respect to a Charge registered under this Part—

- (a) the debt or other liability the payment or discharge of which was secured by the Charge has been paid or discharged in whole or in part; or
- (b) the Property charged or part of that Property is released from the Charge,

the person who was the holder of the Charge at the time when the debt or other liability was so paid or discharged or the Property or part of the Property was released must, within 14 days after receipt of a request in writing made by the Company on whose Property the Charge exists, give to the Company a memorandum in the Prescribed Form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the Property or that part of it is no longer subject to the Charge, as the case may be.

(2) The Company must Lodge the memorandum with the Registrar and, upon the memorandum being Lodged, the Registrar must enter in the Charges Register particulars of the matters stated in the memorandum.

*Extension of time to register Charges*

**376.** The Court, on being satisfied that the omission to register a Charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such Charge or in a 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 the creditors or Members of the Company, or that, on other grounds, it is just and equitable to grant relief, may, on the application of the Company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration must be extended, or, as the case may be, that the omission or misstatement must be rectified.

*Certain Charges void against liquidator*

**377.**—(1) Where an order is made, or a resolution is passed, for the winding up of a Company, a registrable Charge on Property of the Company is void as a security on that Property as against the liquidator unless the documents specified in section 371(1) were Lodged—

- (a) within the relevant period; or
- (b) at least 6 months before the critical day.

(2) Where, after there has been a variation in the terms of a registrable Charge on Property of a Company having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the Charge, an order is made, or a resolution is passed, for the winding up of the Company, the Charge is void as a security on that Property to the extent that it secures the amount of the increase in that debt or liability unless the documents specified in section 371(1) were Lodged—

- (a) within the relevant period; or
- (b) at least 6 months before the critical day.

(3) The Court, if it is satisfied that the failure to Lodge a notice in respect of a Charge, or in respect of a variation in the terms of a Charge, as required by any provision of this Part—

- (a) was accidental or due to inadvertence or some other sufficient cause; or
- (b) is not of a nature to prejudice the position of creditors or Members of the Company,

or that on other grounds it is just and equitable to grant relief, may, on the application of the Company or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

(4) Nothing in this section operates to affect the title of a person to Property purchased for value from a Chargee or from a Receiver appointed by a Chargee in the exercise of powers conferred by the Charge or implied by law if that person purchased the Property in good faith and without notice of—

- (a) the filing of an application for an order for the winding up of the Company; or
- (b) the passing of a resolution for the voluntary winding up of the Company.

(5) Nothing in this section operates to affect the title of a person to Property (other than the Charge concerned or an interest in the Charge concerned) purchased for value from a Chargee under a Charge, from an agent of a Chargee under a Charge, or from a Receiver appointed by a Chargee under a Charge in the exercise of powers conferred by the Charge or implied by law, if that person purchased the Property in good faith and without notice that the Charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the Charge.



(6) The onus of proving that a person purchased Property in good faith and without notice of any of the matters referred to in subsection (4) is on the person asserting that the Property was so purchased.

(7) In this section, “critical day”, in relation to a Company, means if the Company is being wound up – the day on which an application for the winding up was presented under section 522.

*Charges in favour of certain persons void in certain cases*

**378.—**(1) Where—

- (a) a Company creates a Charge on Property of the Company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the Charge; and
- (b) within 6 months after the creation of the Charge, the Chargee purports to take a step in the enforcement of the Charge without the Court having, under subsection (3), given leave for the Charge to be enforced,

the Charge, and any powers purported to be conferred by an instrument creating or evidencing the Charge, are, and are taken always to have been, void.

(2) Without limiting the generality of subsection (1), a person who—

- (a) appoints a Receiver of Property of a Company under powers conferred by an instrument creating or evidencing a Charge created by the Company; or
- (b) whether directly or by an agent, enters into possession or assumes control of Property of a Company for the purposes of enforcing a Charge created by the Company,

is taken, for the purposes of subsection (1), to take a step in the enforcement of the Charge.

(3) On application by the Chargee under a Charge, the Court may, if it is satisfied that—

- (a) immediately after the creation of the Charge, the Company that created the Charge was Solvent; and
- (b) in all the circumstances of the case, it is just and equitable for the Court to do so,

give leave for the Charge to be enforced.

(4) Nothing in subsection (1) affects a debt, liability or obligation of a Company that would, if that subsection had not been enacted, have been secured by a Charge created by the Company.

(5) Nothing in subsection (1) operates to affect the title of a person to Property (other than the Charge concerned or an interest in the Charge concerned) purchased for value from a Chargee under a Charge, from an agent of a Chargee under a Charge, or from a Receiver appointed by a Chargee under a Charge in the exercise of powers conferred by the

Charge or implied by law, if that person purchased the Property in good faith and without notice that the Charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the Charge.

(6) The onus of proving that a person purchased Property in good faith and without notice that a Charge was created as mentioned in subsection (5) is on the person asserting that the Property was so purchased.

(7) In this section—

“officer”, in relation to a Company means an Officer and includes, in the case of a Foreign Company, a Local Agent of the Foreign Company;

“relevant person”, in relation to a Charge created by a Company, means—

- (a) a person who is at the time when the Charge is created, or who has been at any time during the period of 6 months ending at that time, an Officer of the Company; or
- (b) a person associated, in relation to the creation of the Charge, with a person of a kind referred to in paragraph (a).

### *Division 2—Company Register of Charges*

#### *Registration of documents relating to Charges*

**379.**—(1) The Registrar must keep a register of Charges.

(2) Where a notice in respect of a Charge on Property of a Company is Lodged (whether during or after the period within which the notice was required to be Lodged) and the notice contains all the particulars required by the relevant section to be included in the notice, the Registrar must as soon as practicable cause to be entered in the Charges Register the time and date when the notice was Lodged and the following particulars in relation to the Charge—

- (a) if the Charge is a Charge created by the Company, the date of its creation or, if the Charge was a Charge existing on Property acquired by the Company, the date on which the Property was so acquired;
- (b) a short description of the liability (whether present or prospective) secured by the Charge;
- (c) a short description of the Property charged; and
- (d) the name of the trustee for Debenture Holders or, if there is no such trustee, the name of the Chargee.

(3) Where particulars in respect of a Charge are entered in the Charges Register in accordance with subsection (2), the Charge is taken to be registered, and to have been registered from and including the time and date entered in the Charges Register under that subsection.

(4) The Registrar may enter in the Charges Register in relation to a Charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the Registrar thinks fit.

(5) A Company must keep, at the place where the register referred to in section 81 is kept, a copy of—

(a) every document relating to a Charge on Property of the Company that was or is Lodged under this Part; and

(b) a copy of every document given to the Company under this Part.

(6) A register kept by a Company pursuant to section 81 must be open for inspection—

(a) by any creditor or Member of the Company –without charge; and

(b) by any other person – on payment for each inspection of such amount, not exceeding the Prescribed Amount, as the Company requires or, where the Company does not require the payment of an amount, without charge.

(7) A person may request a Company to furnish the person with a copy of the register or any part of the register and, where such a request is made, the Company must send the copy to that person—

(a) if the Company requires payment of an amount not exceeding the Prescribed Amount – within 21 days after payment of the amount is received by the Company or within such longer period as the Registrar approves; or

(b) in a case to which paragraph (a) does not apply – within 21 days after the request is made or within such longer period as the Registrar approves.

*Power of Court to rectify Charges Register*

**380.**—(1) Where the Court is satisfied—

(a) that a particular with respect to a Charge on Property of a Company has been omitted from, or misstated in, the Charges Register; and

(b) that the omission or misstatement—

(i) was accidental or due to inadvertence or to some other sufficient cause;

(ii) is not of a nature to prejudice the position of creditors or Members of the Company; or

(iii) was due to a failure of an electronic system to Lodge a notice in respect of a Charge,

or that on other grounds it is just and equitable to grant relief.

(2) The Court may, on the application of the Registrar, the Company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or misstatement be rectified.

*Division 3—Priority of Charges**Interpretation***381.—(1)** In this Part—

“priority time”, in relation to a registered Charge, means—

- (a) except as provided by paragraph (b) or (c) – the time and date entered in the Charges Register;
- (b) where a notice has been Lodged under section 372 in relation to a Charge on Property, being a Charge that, at the time when the notice was Lodged, was already registered under Part 31 – the earlier or earliest time and day appearing in the Charges Register in relation to the Charge, being a time and day entered in the Register pursuant to section 372; and
- (c) to the extent that the Charge has effect as varied by a variation notice of which was required to be Lodged under section 374 – the time and date entered in the Register in relation to the Charge pursuant to section 374;

“prior registered Charge”, in relation to another registered charge, means a Charge the priority time of which is earlier than the priority time of the other Charge;

“registered Charge” means a Charge that is registered under Part 31;

“subsequent registered Charge”, in relation to another registered Charge, means a Charge the priority time of which is later than the priority time of the other registered Charge; and

“unregistered charge” means a Charge that is not registered under Part 31 but does not include a Charge that is not a registrable Charge.

(2) A reference in this Part to a person having notice of a Charge includes a reference to a person having constructive notice of the Charge.

*Application of this Part*

**382.—(1)** A mortgage registered in accordance with the Land Transfer Act (Cap. 131) (“LTA”) over land held by a Company is taken to be a registered Charge for the purpose of this Act and the provisions of the LTA apply to the extent that there is no inconsistency with this Act.

(2) This Part does not prevent Chargees from agreeing between themselves on a priority of Charges on Property of a Company which differs from the priority of those Charges under this Act.

(3) In this Part, “priority time”, in relation to a mortgage registered in accordance with the LTA over land held by a Company, means—

- (a) except as provided by paragraph (b) – the time and date the mortgage is registered in accordance with the LTA; and

- (b) to the extent that the mortgage has been varied in accordance with the LTA – the time and date the mortgage was varied in accordance with the LTA.

*Priorities of Charges*

**383.**—(1) The application, in relation to particular registrable Charges, of the order of priorities of Charges set out in this Part is subject to—

- (a) any consent (express or implied) that varies the priorities in relation to each other of those Charges, being a consent given by the holder of one of those Charges, being a Charge that would otherwise be entitled to priority over the other Charge; and
- (b) any agreement between those Chargees that affects the priorities in relation to each other of the Charges in relation to which those persons are the Chargees.

(2) The holder of a registered Charge, being a floating Charge, on Property of a Company is taken, for the purposes of subsection (1), to have consented to that Charge being postponed to a subsequent registered Charge, being a fixed Charge that is created before the floating Charge becomes fixed, on any of that Property unless—

- (a) the creation of the subsequent registered Charge contravened a provision of the instrument or resolution creating or evidencing the floating Charge; and
- (b) a notice in respect of the floating Charge indicating the existence of the provision referred to in paragraph (a) was Lodged with the Registrar under section 371 before the creation of the subsequent registered Charge.

(3) This Part does not apply so as to affect the operation of—

- (a) the Copyright Act 1999;
- (b) the United Kingdom Designs (Protection) Act (Cap. 242);
- (c) the Insurance Act 1998;
- (d) the Patents Act (Cap. 239); or
- (e) the Trade-Marks Act (Cap. 240).

*General priority rules in relation to registered Charges*

**384.**—(1) A registered Charge on Property of a Company has priority over—

- (a) a subsequent registered Charge on the Property, unless the subsequent registered Charge was created before the creation of the prior registered Charge and the Chargee in relation to the subsequent registered Charge proves that the Chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered Charge was created;

- (b) an unregistered Charge on the Property created before the creation of the registered Charge, unless the Chargee in relation to the unregistered Charge proves that the Chargee in relation to the registered Charge had notice of the unregistered Charge at the time when the registered Charge was created; and
  - (c) an unregistered Charge on the Property created after the creation of the registered Charge.
- (2) A registered Charge on Property of a Company is postponed to—
  - (a) a subsequent registered Charge on the Property, where the subsequent registered Charge was created before the creation of the prior registered Charge and the Chargee in relation to the subsequent registered Charge proves that the Chargee in relation to the prior registered Charge had notice of the subsequent registered Charge at the time when the prior registered Charge was created; and
  - (b) an unregistered Charge on the Property created before the creation of the registered Charge, where the Chargee in relation to the unregistered Charge proves that the Chargee in relation to the registered Charge had notice of the unregistered Charge at the time when the registered Charge was created.

*General priority rule in relation to unregistered Charges*

**385.**—(1) An unregistered Charge on Property of a Company has priority over—

- (a) a registered Charge on the Property that was created after the creation of the unregistered Charge and does not have priority over the unregistered Charge under section 384(1); and
- (b) another unregistered Charge on the Property created after the first mentioned unregistered Charge.

**PART 32—FINANCIAL REPORTING**

*Division 1—Financial Records*

*Obligation to keep Financial Records*

**386.**—(1) A Company or Managed Investment Scheme must keep, in the English language, written Financial Records that—

- (a) correctly record and explain all transactions, including, but not limited to—
  - (i) all sums of money received and expended by the Company or Managed Investment Scheme and the matters in respect of which the receipt and expenditure takes place;

- (ii) all sales and purchases of goods and services by the Company or Managed Investment Scheme; and
- (iii) the assets and liabilities of the Company or Managed Investment Scheme; and

(b) would enable true and fair Financial Statements to be prepared and audited.

(2) The Financial Records must be retained for 7 years after the transactions covered by the records are completed.

(3) The Financial Records must be kept at the Registered Office of the Company or Managed Investment Scheme or, at such other place in Fiji as the Directors think fit, and shall, at all times, be open to inspection by the Directors.

*Director access*

**387.**—(1) A Director of a Company or Managed Investment Scheme has a right of access to the Financial Records at all reasonable times.

(2) On application by a Director, the Court may authorise a person to inspect the Financial Records on the Director's behalf.

(3) A person authorised to inspect records may make copies of the records unless the Court orders otherwise.

(4) The Court may make any other order it considers appropriate, including either or both of the following—

- (a) an order limiting the use that a person who inspects the Financial Records may make of information obtained during the inspection;
- (b) an order limiting the right of a person who inspects the Financial Records to make copies in accordance with subsection (3).

*Division 2—Annual Financial Reports and Director's Reports*

*Who has to prepare annual Financial Statements and Directors' Reports*

**388.**—(1) Financial Statements and a Directors' Report must be prepared for each Financial Year by—

- (a) all Public Companies;
- (b) all Large Private Companies; and
- (c) all Managed Investment Schemes.

(2) Proforma Financial Statements must be prepared for each Financial Year by all Medium Private Companies.

(3) A Small Private Company has to prepare—

- (a) Financial Statements if it is directed to do so under section 389;

(b) Proforma Financial Statements it was controlled by a Foreign Company for all or part of the year and it is not consolidated for that period in Financial Statements or Proforma Financial Statements for that year Lodged with the Registrar by—

- (i) a registered Foreign Company; or
- (ii) a Company or Managed Investment Scheme.

(4) If a Company has to prepare Financial Statements, it does not have to prepare Proforma Financial Statements.

*Small Private Company – Direction to prepare Financial Statements*

**389.**—(1) The Registrar or Members with at least 10% of the votes in a Small Private Company may give the Company a direction to—

- (a) prepare Financial Statements for a Financial Year; and
- (b) send them to all Members.

(2) The direction must be—

- (a) signed by the Registrar or the Members giving the direction;
- (b) specify the Financial Year concerned;
- (c) be made no later than 12 months after the end of the Financial Year concerned; and
- (d) in the case of a direction by the Registrar, specify a date by which documents have to be prepared, sent or Lodged provided the date is reasonable having regard to the nature of the direction.

(3) The direction may specify that the Financial Statements do not have to comply with some or all of the Accounting Standards.

*Directors' declaration regarding Financial Statements*

**390.**—(1) The Financial Statements for each Financial Year must be accompanied by a declaration by the Directors as to—

- (a) whether, in the Directors' opinion, there are reasonable grounds to believe that the Company, Managed Investment Scheme or consolidated entity will be able to pay its debts as and when they become due and payable; and
- (b) whether, in the Directors' opinion, the Financial Statements have been prepared in accordance with this Act.

(2) The declaration must—

- (a) be made in accordance with a resolution of the Directors;
- (b) specify the date on which the declaration is made; and
- (c) be signed by a Director.



*Preparation of Financial Statements*

**391.**—(1) The Financial Statements must comply with the Accounting Standards and give a true and fair view of the financial position and performance of the Company, Managed Investment Scheme or consolidated entity.

(2) The Proforma Financial Statements must comply with the Accounting Standards and must be true and correct in all material respects.

*Annual Directors' Report*

**392.**—(1) If required under this Act to prepare a Directors' Report, the Company or Managed Investment Scheme must prepare a Directors' Report for each Financial Year.

(2) The Directors' Report must contain information that Members would reasonably require to make an informed assessment of—

- (a) the operations of the Company or Managed Investment Scheme reported on;
- (b) the financial position and performance of the Company or Managed Investment Scheme reported on;
- (c) whether the Company or Managed Investment Scheme is a going concern; and
- (d) details of the dividends paid in the Financial Year to which the report relates and dividends proposed to be paid in the following Financial Year.

(3) The report must—

- (a) be made in accordance with a resolution of the Directors;
- (b) specify the date on which the report is made; and
- (c) be signed by a Director.

(4) Where the Financial Statements are prepared for a consolidated entity, the Director's report must be prepared by the Directors of the Ultimate Holding Company and provided in relation to the consolidated entity.

*Division 3—Audit and Auditor's Report**Audit of annual Financial Statements*

**393.**—(1) A Company or Managed Investment Scheme which is required to prepare Financial Statements must have the Financial Statements audited in accordance with the Auditing Standards by an Auditor appointed in accordance with this Act.

(2) A Small Private Company's Financial Statements for a Financial Year do not have to be audited if—

- (a) the Financial Statements are prepared in response to a direction under section 388(4); and
- (b) the direction did not ask for the Financial Statements to be audited.

*Audit working papers to be retained for 7 years*

**394.** An Auditor contravenes this section if the Auditor does not retain all Audit working papers prepared by or for, or considered or used by, the Auditor in accordance with the requirements of the Auditing Standards until the end of 7 years after the date of the Auditor's Report prepared in relation to the audit or review to which the Audit working papers relate.

*Auditor's independence declaration*

**395.—**(1) If an Auditor conducts an Audit or review of the Financial Statements for a Financial Year, the Auditor must give the Directors of the Company, Managed Investment Scheme or Ultimate Holding Company in respect of Financial Statements for a consolidated entity,—

- (a) a written declaration that, to the best of the Auditor's knowledge and belief, there have been—
  - (i) no contraventions of the Auditor independence requirements of this Act in relation to the Audit or review; and
  - (ii) no contraventions of any applicable code of professional conduct in relation to the Audit or review; or
- (b) a written declaration that, to the best of the Auditor's knowledge and belief, the only contraventions of—
  - (i) the Auditor independence requirements of this Act in relation to the Audit or review; or
  - (ii) any applicable code of professional conduct in relation to the Audit or review,

are those contravention details of which are set out in the declaration.

(2) The declaration under subsection (1)—

- (a) either—
  - (i) must be given when the Auditor's Report is given to the Directors of the Company, the Manager of the Managed Investment Scheme or the Ultimate Holding Company in respect of Financial Statements for a consolidated entity; or
  - (ii) must satisfy the conditions in subsection (3); and
- (b) must be signed by the person making the declaration.

(3) A declaration under subsection (1) in relation to Financial Statements for a Financial Year satisfies the conditions in this subsection if—

- (a) the declaration is given to the Directors of the Company, the Manager of the Managed Investment Scheme or the Ultimate Holding Company in respect

of Financial Statements for a consolidated entity, before the Directors pass a resolution under section 392(3) in relation to the Directors' Report for the Financial Year;

- (b) a Director signs the Directors' Report within 7 days after the declaration is given to the Directors;
- (c) the Auditor's Report on the Financial Statements is made within 7 days after the Directors' Report is signed; and
- (d) the Auditor's Report includes either of the following statements—
  - (i) a statement to the effect that the declaration would be in the same terms if it had been given to the Directors at the time the Auditor's Report was made;
  - (ii) a statement to the effect that circumstances have changed since the declaration was given to the Directors, and setting out how the declaration would differ if it had been given to the Directors at the time the Auditor's Report was made.

*Auditor's Report*

**396.**—(1) An Auditor who audits the Financial Statements for a Financial Year must prepare a report to Members on whether the Auditor is of the opinion that the Financial Statements have been prepared in accordance with this Act in all material respects, including—

- (a) whether the Auditor has been given all information, explanation and assistance necessary for the conduct of the Audit;
- (b) whether the Company, Managed Investment Scheme or consolidated entity has kept Financial Records sufficient to enable the Financial Statements to be prepared and audited; and
- (c) in any of these cases, if the Auditor is not of that opinion, the Financial Statements must say why.

(2) The report must include any statement or disclosure required by the Auditing Standards and must specify the date on which it is made.

*Auditor's power to obtain information*

**397.**—(1) The Auditor—

- (a) has a right of access at all reasonable times to the Books of the Company or Managed Investment Scheme; and
- (b) may require any Officer to give the Auditor information, explanations or other assistance for the purposes of the Audit or review.

(2) A request under subsection (1)(b) must be a reasonable one.

*Reporting to the Registrar*

**398.** An Auditor conducting an Audit contravenes this section if the Auditor is aware of circumstances that give the Auditor reasonable grounds to suspect—

- (a) a material contravention of Part 32;
- (b) an attempt, in relation to the Audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the Audit; or
- (c) an attempt, by any person, to otherwise interfere with the proper conduct of the Audit, and

the Auditor does not notify the Registrar in writing of those circumstances as soon as practicable, and in any case within 28 days, after the Auditor becomes aware of those circumstances.

*Special provisions on Audit of Debenture issuers and guarantors*

**399.** If a Debenture Holder asks the borrower in relation to Debentures for copies of an Auditor's Report for the borrower, the Auditor must give the Debenture Holder copies of the Auditor's report as soon as practicable after the request and free of charge.

*Division 4—Annual Reporting to Members**Annual reporting to Members*

**400.—**(1) A Company or Managed Investment Scheme required to prepare Financial Statements under this Act must provide an Annual Report to its Members for each Financial Year by—

- (a) sending to each Member a hard copy of the Annual Report; or
- (b) making a copy of the Annual Report readily accessible on a website and notifying in writing all Members that a copy of the Annual Report is accessible on the website and specifying the direct address on that website, provided the respective Members have informed the Company or Managed Investment Scheme in writing that they wish to access the Annual Reports from a website rather than receive a hard copy and have not retracted that instruction.

(2) A Public Company that is not a Managed Investment Scheme, must provide an Annual Report to its Members by the earlier of—

- (a) 21 days before the next AGM after the end of the Financial Year; or
- (b) 4 months after the end of the Financial Year.

(3) Large Private Companies and Managed Investment Schemes must provide an Annual Report to its Members within 4 months after the end of the Financial Year.

(4) If a Member direction is given to a Small Private Company under section 388(4) after the end of the Financial Year, the Company must provide the Financial Statements and Directors' Report to its Members by the later of—

- (a) 2 months after the date on which the direction is given; and
- (b) 4 months after the end of the Financial Year.

*Consideration of Annual Reports at AGM*

**401.** The Directors of a Public Company that is required to hold an AGM must lay before the AGM, the Annual Report for the last Financial Year that ended before the AGM.

*Additional reporting by Debenture issuers*

**402.** If a Debenture Holder asks the borrower in relation to Debentures at the end of a Financial Year for copies of the borrower's Annual Report, the borrower must give the Debenture Holder copies of the Annual Report as soon as practicable after the request and free of charge.

*Division 5—Lodging Annual Report with the Registrar*

*Lodgement of Annual Report with the Registrar*

**403.—**(1) A Company or Managed Investment Scheme that has to prepare an Annual Report or Proforma Financial Statements for a Financial Year under this Act must Lodge the Annual Report with the Registrar, using the Prescribed Form, within 4 months after the end of the Financial Year.

(2) Subsection (1) does not apply to a Small Private Company that prepares Financial Statements or Proforma Financial Statements, and a Directors' Report in response to a Member's direction under section 388(4).

(3) The Registrar may make any Annual Report Lodged with the Registrar publicly available, except the Annual Reports of Private Companies.

*Re-lodgement if Annual Report amended after Lodgement*

**404.—**(1) If the Annual Report or Proforma Financial Statements, or any part of the Annual Report or Proforma Financial Statements, is amended after Lodgement with the Registrar, the Company or Managed Investment Scheme must—

- (a) Lodge the amended Annual Report or Proforma Financial Statements with the Registrar, using the Prescribed Form, within 14 days after the amendment; and
- (b) give a copy of the amended Annual Report or Proforma Financial Statements free of charge to any Member who asks for it.

(2) If the amendment is a material one, the Company or Managed Investment Scheme must also notify Members as soon as practicable of the nature of the amendment, and their right to obtain a copy of the amended Annual Report or Proforma Financial Statements under subsection (1).

*Division 6—Special Provisions about Consolidated Financial Statements**Directors and Officers of controlled entity to give information*

**405.** If a Company or Managed Investment Scheme has to prepare consolidated Financial Statements, a Director or other Officer of a controlled entity must give the Company or Managed Investment Scheme all information requested that is necessary to prepare the consolidated Financial Statements.

*Auditor's power to obtain information from controlled entity*

**406.—**(1) An Auditor who audits or reviews consolidated Financial Statements—

- (a) has a right of access at all reasonable times to the Books of any controlled entity; and
- (b) may require any Officer of the entity to give the Auditor information, explanations or other assistance for the purposes of the Audit or review,

provided the request is a reasonable request.

(2) The information, explanations or other assistance required under subsection (1) (b) is to be given at the expense of the Ultimate Holding Company of the consolidated entity whose Financial Statements are being audited or reviewed.

*Division 7—Financial Years**Financial Years*

**407.—**(1) The first Financial Year for a Company or Managed Investment Scheme starts on the day on which it is registered or incorporated and lasts for 12 months or the period (not longer than 18 months) determined by the Directors.

(2) Subsequent Financial Years must—

- (a) start at the end of the previous Financial Year; and
- (b) be 12 months long.

(3) The Directors may determine that the Financial Year is to be shorter or longer (but not by more than 7 days).

(4) A Company or Managed Investment Scheme that has to prepare consolidated Financial Statements must do whatever is necessary to ensure that the Financial Years of the consolidated entities are synchronised with its own Financial Years. It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

(5) To facilitate this synchronisation, the Financial Year for a controlled entity may be extended or shortened.

(6) The extended Financial Year cannot be longer than 18 months.

*Division 8—Solvency Resolution**Directors must pass annual Solvency Resolution*

**408.**—(1) The Directors of a Company must pass a Solvency Resolution within 2 months after the end of each Financial Year.

(2) Subsection (1) does not apply to the Directors of a Company that has Lodged a Financial Report with the Registrar under Part 32 within the last Financial Year.

*Notice to the Registrar*

**409.**—(1) If the Directors of a Company pass a Negative Solvency Resolution under section 408(1), the Company must notify the Registrar of that fact, in the Prescribed Form, within 7 days after the resolution is passed.

(2) If—

- (a) subsection (1) applies to the Directors of a Company; and
- (b) the Directors have not passed a Solvency Resolution under section 408(1) within 2 months after the anniversary of the day on which it is registered,

the Company must notify the Registrar of that fact, in the Prescribed Form, within 7 days after the end of the 2 month period after the end of the Financial Year.

**PART 33—REGISTRATION OF AUDITORS AND LIQUIDATORS***Application for registration as Auditor or liquidator*

**410.**—(1) A natural person who ordinarily resides in Fiji may make an application to the Ministry of Justice—

- (a) for registration as an Auditor;
- (b) for registration as a liquidator; or
- (c) for registration as a liquidator of a specified Company or Managed Investment Scheme, that is to be wound up under this Act.

(2) An application under this section—

- (a) must be Lodged with the Ministry of Justice;
- (b) must contain such information as is prescribed in the regulations made under this Act; and
- (c) must be in the Prescribed Form.

*Registration of Auditor or liquidator*

**411.**—(1) Subsection (2) does not come into force until 6 months after the commencement date.

(2) An applicant for registration as an Auditor must—

- (a) ordinarily reside in Fiji; and

- (b) be a chartered accountant with a current Certificate of Public Practice issued by the Fiji Institute of Accountants in accordance with the Fiji Institute of Accountants Act (Cap. 259).

(3) The Ministry of Justice is deemed to automatically grant an application by a person for registration as an Auditor or as an Auditor of a specified Company or Managed Investment Scheme if the applicant is a chartered accountant who has Lodged a current Certificate of Public Practice issued by the Fiji Institute of Accountants in accordance with the Fiji Institute of Accountants Act (Cap. 259), with the Ministry of Justice.

(4) Subsection (5) does not come into force until 12 months after the commencement date.

(5) An applicant for registration as a liquidator must—

- (a) ordinarily reside in Fiji;
- (b) hold a degree, diploma or certificate from a university acceptable to the Ministry of Justice or another institution in Fiji or outside of Fiji acceptable to the Ministry of Justice;
- (c) be a chartered accountant with a current Certificate of Public Practice issued by the Fiji Institute of Accountants in accordance with the Fiji Institute of Accountants Act (Cap. 259); and
- (d) satisfy the Ministry of Justice—
  - (i) as to the experience of the applicant in connection with Companies to which a Receiver or Manager has been appointed, or are being wound up; and
  - (ii) that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator.

(6) The Ministry of Justice must not register as a liquidator, or as a liquidator of a specified Company or Managed Investment Scheme, a person who is disqualified from acting as an Officer of a Company under Part 12.

(7) Where—

- (a) the Ministry of Justice grants an application by a person for registration as an Auditor or liquidator or as an Auditor or liquidator of a specified Company or Managed Investment Scheme; and
- (b) the person has complied with the requirements of section 412,

the Ministry of Justice must cause to be issued to the person a certificate by the Ministry of Justice—

- (i) stating that the person has been registered as an Auditor or liquidator or as an Auditor or liquidator of a specified Company or Managed Investment Scheme;



- (ii) specifying the day on which the Ministry of Justice granted the application as the day of the beginning of the registration; and
- (iii) in the case of a person who is registered as an Auditor or liquidator of a specified Company or Managed Investment Scheme – setting out the name of that body.

(8) The registration of a person as an Auditor or liquidator, otherwise than as an Auditor or liquidator of a specified Company or Managed Investment Scheme, comes into force at the beginning of the day specified in the certificate as the day of the beginning of the registration and remains in force until—

- (a) the registration is cancelled by the Ministry of Justice; or
- (b) the person dies.

(9) The Ministry of Justice must not refuse to register a person as an Auditor or liquidator, or as an Auditor or liquidator of a specified Company or Managed Investment Scheme, unless the Ministry of Justice has given the person an opportunity to make submissions and give evidence to the Ministry of Justice in relation to the matter.

(10) Where the Ministry of Justice refuses an application by a person for registration as an Auditor or liquidator, or as an Auditor or liquidator of a specified Company or Managed Investment Scheme, the Ministry of Justice must, not later than 14 days after the decision, give to the person notice in writing setting out the decision and the reasons for it.

*Insurance to be maintained by Auditors and liquidators*

**412.**—(1) A person who is registered as an Auditor or liquidator, or as an Auditor or liquidator of a specified Company or Managed Investment Scheme, must maintain—

- (a) adequate and appropriate professional indemnity insurance; and
- (b) adequate and appropriate fidelity insurance,

for claims that may be made against the person in connection with their role as Auditor or liquidator.

(2) If the registration of a person as an Auditor or liquidator, or as an Auditor or liquidator of a specified Company or Managed Investment Scheme, came into force before the commencement of this Act, subsection (1) does not apply to the person at any time before the commencement date.

*Auditor General taken to be registered as Auditor*

**413.**—(1) A person who holds office as, or is for the time being exercising the powers and performing the duties of the Auditor General is taken, despite any other provision of this Part, to be registered as an Auditor.

(2) A person to whom the Auditor General delegates—

- (a) the function of conducting an audit; or
- (b) the power to conduct an audit,

is taken to be registered as an Auditor under this Part.

*Register of Auditors*

**414.**—(1) The Ministry of Justice must cause a register of Auditors (“Register”) to be kept for the purposes of this Act and must cause to be entered in the Register in relation to a person who is registered as an Auditor—

- (a) the name of the person;
- (b) the day on which the application by that person for registration as an Auditor was granted;
- (c) the address of the principal place where the person practises as an Auditor and the address of the other places (if any) at which he or she so practises;
- (d) if the person practises as an Auditor as a member of a firm, employee of a Company or under a name other than his or her own name – the name and address of that firm, Company or other name under which he or she so practises; and
- (e) particulars of any suspension of the person’s registration;

and may cause to be entered in the Register in relation to a person who is registered as an Auditor such other particulars as the Ministry of Justice considers appropriate.

(2) Where a person ceases to be registered as an Auditor, the Ministry of Justice must cause to be removed from the Register the name of the person and any other particulars entered in the Register in relation to that person.

(3) A person may inspect and make copies of, or take extracts from, the Register.

*Registers of liquidators*

**415.**—(1) The Ministry of Justice must cause a register of liquidators (“Register”) to be kept for the purposes of this Act and must cause to be entered in the Register—

- (a) in relation to a person who is registered as a liquidator—
  - (i) the name of the person;
  - (ii) the day of the beginning of the registration of that person as a liquidator;
  - (iii) the address of the principal place where the person practises as a liquidator and the addresses of the other places (if any) at which he or she so practises;
  - (iv) if the person practises as a liquidator as a member of a firm, an employee of a Company or under a name other than his or her own name – the name and address of that firm, Company or other name under which he or she so practises; and
  - (v) particulars of any suspension of the registration of the person as a liquidator or as a liquidator of a specified Company or Managed Investment Scheme;

- (b) in relation to a person who is registered as a liquidator of a specified Company or Managed Investment Scheme—
- (i) the name of the person;
  - (ii) the name of the Company or Managed Investment Scheme;
  - (iii) the day of commencement of the registration of the person as a liquidator of the Company or Managed Investment Scheme;
  - (iv) the address of the principal place where the person proposes to perform his or her functions as the liquidator of the Company or Managed Investment Scheme;
  - (v) if the person practises as a liquidator as a member of a firm, an employee of a Company or under a name other than his or her own name – the name and address of that firm, Company or other name under which he or she so practises; and
  - (vi) particulars of any suspension or deemed suspension of the registration of the person as a liquidator of that Company or Managed Investment Scheme or as a liquidator of a specified Company or Managed Investment Scheme,

and may cause to be entered in the Register in relation to a person who is registered as a liquidator, or as a liquidator of a specified Company or Managed Investment Scheme, such other particulars as the Ministry of Justice considers appropriate.

(2) Where a person ceases to be registered as a liquidator, as a liquidator of a specified Company or Managed Investment Scheme, the Ministry of Justice must cause to be removed from the Register, the name of the person and any other particulars entered in that Register in relation to that person.

(3) A person may inspect and make copies of, or take extracts from, the Register.

*Notification of certain matters*

**416.**—(1) Where—

- (a) a person who is a registered Auditor or liquidator or registered as an Auditor or liquidator for a specified Company or Managed Investment Scheme, ceases to practise in that capacity;
- (b) a person is appointed under this Act to act as an Auditor or liquidator; or
- (c) a change occurs in any matter particulars of which are required under this Act to be entered in the appropriate register in relation to that person,

the person must, not later than 21 days after the occurrence of the event concerned, Lodge with the Ministry of Justice, in the Prescribed Form, particulars in writing of that event.

(2) If a person who is registered as an Auditor, as a liquidator or as an Auditor or liquidator of a specified Company or Managed Investment Scheme is disqualified from acting as an Officer of a Company under Part 12, then, within a period of 3 days after they become disqualified, they must Lodge with the Ministry of Justice written particulars in the Prescribed Form of the circumstances because of which they become disqualified.

*The Ministry of Justice may impose conditions on registration*

**417.**—(1) Under this section, the Ministry of Justice may impose only conditions of a kind specified in the regulations made under this Act.

(2) Subject to this section, the Ministry of Justice may, at any time, by giving written notice to a person registered as an Auditor or liquidator—

- (a) impose conditions, or additional conditions, on their registration; and
- (b) vary or revoke conditions imposed on their registration.

(3) Except where conditions are varied on the application of the registered Company Auditor or liquidator, the Ministry of Justice may only impose conditions or additional conditions, or vary the conditions, on registration after giving the Auditor an opportunity to make submissions to the Ministry of Justice in relation to the matter.

(4) This subsection does not apply to the Ministry of Justice imposing conditions at the time when the applicant is registered.

*Cancellation at request of registered person*

**418.**—(1) Where a person who is a registered Auditor or liquidator or registered as an Auditor or liquidator for a specified Company or Managed Investment Scheme requests the Ministry of Justice to cancel his or her registration, the Ministry of Justice may cancel the registration of that person as an Auditor, as a liquidator or as an Auditor or liquidator of that Company or Managed Investment Scheme, as the case may be.

(2) A decision by the Ministry of Justice under subsection (1) to cancel the registration of a person who is a registered Auditor or liquidator or registered as an Auditor or liquidator for a specified Company or Managed Investment Scheme, comes into effect as soon as practicable upon the making of the decision.

*Cancellation on certain grounds*

**419.**—(1) If a person who is registered as an Auditor or a liquidator or as a liquidator of a specified Company or Managed Investment Scheme—

- (a) becomes bankrupt or insolvent;
- (b) becomes disqualified from acting as an Officer of a Company under Part 12; or
- (c) contravenes section 412,

the Ministry of Justice may cancel the registration of that person as an Auditor or a liquidator or as an Auditor or a liquidator of that Company or Managed Investment Scheme, as the case may be.

(2) If the Ministry of Justice decides under subsection (1) to cancel the registration of a person as an Auditor or a liquidator or as a liquidator of a specified Company or Managed Investment Scheme—

- (a) the Ministry of Justice must, not later than 14 days after the decision, give the person a written notice—
  - (i) setting out the decision; and
  - (ii) the reasons for it; and
- (b) the decision comes into effect at the end of the day on which that notice is given to the person.

(3) A failure of the Ministry of Justice to comply with subsection (2) does not affect the validity of the decision.

## PART 34—APPOINTMENT AND REMOVAL OF AUDITORS

### *Division 1—Appointment and Removal of Auditors*

#### *Appointment of Auditor by Private Company*

**420.**—(1) The Directors of a Private Company or Manager of a Managed Investment Scheme may appoint an Auditor for the Company if an Auditor has not been appointed by the Company or Managed Investment Scheme in a General Meeting.

(2) If—

- (a) a vacancy occurs in the office of Auditor of a Private Company;
- (b) the vacancy is not caused by the removal of an Auditor from office; and
- (c) there is no surviving or continuing Auditor of the Company,

the Directors must, within 28 days after the vacancy occurs, appoint an Auditor to fill the vacancy.

#### *Public Company Auditor (initial appointment of Auditor)*

**421.**—(1) The Directors of a Public Company must appoint an Auditor of the Company within 28 days after the day on which a Company is registered as a Company unless the Company at a General Meeting has appointed an Auditor.

(2) Subject to this Part, an Auditor appointed under subsection (1) holds office until the Company's first AGM.

#### *Public Company Auditor (annual appointments at AGMs to fill vacancies)*

**422.**—(1) A Public Company must—

- (a) appoint an Auditor of the Company at its first AGM; and
- (b) appoint an Auditor of the Company to fill any vacancy in the office of Auditor at each subsequent AGM.

(2) If—

- (a) a vacancy occurs in the office of Auditor of a Public Company;
- (b) the vacancy is not caused by the removal of an Auditor from office; and
- (c) there is no surviving or continuing Auditor of the Company,

the Directors must, within 28 days after the vacancy occurs, appoint an Auditor to fill the vacancy unless the Company at a General Meeting has appointed an Auditor to fill the vacancy.

(3) An Auditor appointed under subsection (2) holds office, subject to this Part, until the Company's next AGM.

(4) If an Auditor of a Company is removed from office at a General Meeting in accordance with section 427, the Company may at that General Meeting (without adjournment), by Special Resolution immediately appoint an Auditor of the Company.

(5) If a Special Resolution is not passed, the General Meeting must be adjourned once all other business has been conducted and the Directors must appoint an Auditor to fill the vacancy until a General Meeting can be held at which the Company appoints an Auditor by Special Resolution which must occur as soon as possible.

*Term of office*

**423.** An Auditor appointed under section 422(1) holds office until the Auditor—

- (a) dies;
- (b) is removed, or resigns, from office in accordance with section 427 or 428 respectively;
- (c) becomes aware of a conflict of interest and does not give the Ministry of Justice and the Company or Managed Investment Scheme the required notice in accordance with section 430 or the notice states that the conflict continues to exist; or
- (d) ceases to be capable of acting as an Auditor in accordance with this Part.

*Remaining Auditors may act during vacancy*

**424.** While a vacancy in the office of Auditor of a Company continues, the surviving or continuing Auditor or Auditors (if any) may act as Auditors of the Company.

*Auditor's consent to appointment*

**425.—**(1) A Company, the Directors of a Company or the Manager of a Managed Investment Scheme must not appoint an Auditor of the Company unless the Auditor—

- (a) has consented in writing to the Company or the Manager of a Managed Investment Scheme, before the appointment, to act as Auditor; and
- (b) has not withdrawn that consent before the appointment is made.

(2) A notice under subsection (1) given by a firm or Company of which the Auditor is a member or an employee, must also be signed by a member of the firm or Director of the Company both—

- (a) in the firm or Company name; and
- (b) in his or her own name.

*Nomination of Auditor*

**426.**—(1) Subject to this section, a Company may appoint an individual as Auditor of the Company at its AGM only if a Member of the Company gives the Company written notice of the nomination of the individual for appointment as Auditor—

- (a) before the meeting was convened; or
- (b) not less than 21 days before the meeting.

(2) Subsection (1) does not apply if an Auditor is removed from office at the AGM.

*Removal of Auditors*

**427.**—(1) An Auditor of a Company or Managed Investment Scheme may be removed from office by resolution of the Company or Managed Investment Scheme at a General Meeting of which notice under subsection (2) has been given, but not otherwise.

(2) Notice of intention to move the resolution to remove an Auditor must be given to the Company or Manager of a Managed Investment Scheme at least 2 months before the meeting is to be held, however, if the Company or Manager of a Managed Investment Scheme calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

(3) Within 7 days after receiving a copy of the notice, the Auditor may make representations in writing, not exceeding a reasonable length, to the Company or Manager of a Managed Investment Scheme and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the Company or Manager of a Managed Investment Scheme at its expense to every Member to whom notice of the meeting is sent.

(4) The Company or Manager of a Managed Investment Scheme must send a copy of the representations in accordance with the Auditor's request, and the Auditor may, without prejudice to his or her right to be heard orally or, where a firm is the Auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

*Resignation of Auditors*

**428.**—(1) If an Auditor of a Company or Managed Investment Scheme wishes to resign as Auditor of the Company or Managed Investment Scheme at any time between the end of the Financial Year and the delivery of the Auditors' Report, the Auditor may, by notice in writing given to the Company or Managed Investment Scheme, resign as Auditor of the Company or Managed Investment Scheme if—

- (a) the Auditor has, by notice in the Prescribed Form given to the Registrar, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the notice was given to the Registrar, notified the Company or Manager of a Managed Investment Scheme in writing of the application to the Registrar; and
- (b) the consent of the Registrar has been given.

(2) If an Auditor of a Company or Managed Investment Scheme wishes to resign as Auditor of the Company or Managed Investment Scheme at any other time, the Auditor may by notice in writing given to the Company or Managed Investment Scheme, resign as Auditor of the Company or Managed Investment Scheme.

(3) The Registrar must, as soon as practicable after receiving a notice from an Auditor under subsection (1), notify the Auditor and the Company or Manager of a Managed Investment Scheme whether it consents to the resignation of the Auditor.

(4) The resignation of an Auditor under subsection (1) takes effect—

- (a) on the day (if any) specified in the notice of resignation; or
- (b) on the day on which the Registrar gives its consent to the resignation,

whichever last occurs.

(5) The resignation of an Auditor under subsection (2) takes effect on the day (if any) specified in the notice of resignation.

(6) Within 14 days after—

- (a) the removal from office of an Auditor of a Company or Managed Investment Scheme; or
- (b) the receipt of a notice of resignation from an Auditor of a Company or Manager of a Managed Investment Scheme,

the Company or Manager of a Managed Investment Scheme must—

- (i) Lodge with the Ministry of Justice a notice of the removal or resignation in the Prescribed Form; and
- (ii) where there is a trustee for the holders of Debentures of the Company – give to the trustee a copy of the notice Lodged with the Registrar.



*Effect of winding up on office of Auditor*

**429.** An Auditor of a Company or Managed Investment Scheme ceases to hold office if the Company is wound up or the Managed Investment Scheme ceases to exist.

*Division 2—Eligibility for Appointment as Auditor**General requirement for Auditor independence*

**430.—**(1) An Auditor contravenes this subsection if—

- (a) the Auditor engages in audit activity in relation to an audited Company or Managed Investment Scheme at a particular time;
- (b) a conflict of interest situation exists in relation to the audited Company or Managed Investment Scheme at that time;
- (c) at that time the individual Auditor is aware that the conflict of interest situation exists; and
- (d) the Auditor does not, as soon as possible after the Auditor becomes aware that the conflict of interest situation exists—
  - (i) notify the Ministry of Justice of the conflict of interest within 21 days; and
  - (ii) take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

(2) Within 21 days of becoming aware of the conflict of interest, an Auditor must notify the Ministry of Justice and Company or Managed Investment Scheme being audited as to whether the conflict of interest continues to exist or has been resolved.

(3) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by—

- (a) another provision of this Act;
- (b) Auditing Standards; or
- (c) a code of professional conduct.

*Conflict of interest situation*

**431.** For the purposes of this Part, a conflict of interest situation exists in relation to an audited Company or Managed Investment Scheme at a particular time if, because of circumstances that exist at that time—

- (a) the Auditor is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the audited Company or Managed Investment Scheme; or
- (b) a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that the Auditor is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the audited Company or Managed Investment Scheme.

## PART 35—APPOINTMENT OF LIQUIDATORS

*Division 1—General Provisions Regarding Appointment**Appointment of two or more liquidators of a Company*

**432.**—(1) A Company or Managed Investment Scheme may have more than one liquidator.

(2) If two or more persons have been appointed as liquidators of a Company, a function or power of a liquidator of the Company may be performed or exercised by any one of them, or by any two or more of them together, except so far as the order or resolution appointing them otherwise provides.

*Disqualification of liquidator*

**433.**—(1) Subject to this section, a person must not, except with the leave of the Court, be appointed, or act, as liquidator of a Company or a specified Company or Managed Investment Scheme—

- (a) if the person is not a registered as a liquidator or a liquidator of a specified Company under this Act;
- (b) if the person is, otherwise than in his or her capacity as liquidator, a creditor of the Company or a Related Body Corporate in an amount exceeding \$5,000;
- (c) if—
  - (i) the person is an Officer or employee of the Company (otherwise than by reason of being a liquidator of the Company or of a Related Body Corporate);
  - (ii) the person is an Officer or employee of any Company that is a mortgagee of Property of the Company;
  - (iii) the person is an Auditor of the Company;
  - (iv) the person is a partner or employee of an Auditor of the Company; or
  - (v) the person is a partner, employer or employee of an Officer of the Company;
- (d) if the person is bankrupt or Insolvent; or
- (e) if the person has not, before his or her appointment, consented in writing to act as liquidator of the Company or a specified Company or Managed Investment Scheme.

*Division 2—General Provisions Regarding Liquidators**Reports by liquidator*

**434.**—(1) If it appears to the liquidator of a Company, in the course of a winding up of the Company, that—

- (a) a past or present Officer or employee, or a Member or contributory, of the Company may have been guilty of an offence under a law of Fiji in relation to the Company;
- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the Company—
  - (i) may have misapplied or retained, or may have become liable or accountable for, any money or Property of the Company; or
  - (ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the Company; or
- (c) the Company may be unable to pay its unsecured creditors more than 50 cents in the dollar,

the liquidator must—

- (i) as soon as practicable, and in any event within 7 days, after it so appears to him or her, Lodge a report with respect to the matter and state in the report whether the liquidator proposes to make an application for an examination or order under section 567; and
- (ii) give the Registrar such information, and give to it such access to and facilities for inspecting and taking copies of any document, as the Registrar requires.

(2) The liquidator may also, if the liquidator thinks fit, Lodge further reports specifying any other matter that, in the liquidator's opinion, is desirable to bring to the notice of the Registrar.

(3) If it appears to the Court, in the course of winding up a Company—

- (a) that a past or present Officer or employee, or a contributory or Member, of the Company has been guilty of an offence under a law referred to in subsection (1)(a) in relation to the Company; or
- (b) that a person who has taken part in the formation, promotion, management or winding up of the Company has engaged in conduct referred to in subsection (1)(a) in relation to the Company,

and that the liquidator has not Lodged with the Registrar a report with respect to the matter, the Court may, on the application of a person interested in the winding up, direct the liquidator so to Lodge such a report.

*Prosecution by liquidator of delinquent Officers and Members***435.**—(1) Where—

- (a) a report has been Lodged under section 434; and
- (b) it appears to the Registrar that the matter is not one in respect of which a prosecution ought to be begun,

it must inform the liquidator accordingly, and the liquidator may begin a prosecution for any offence referred to in the report with the consent of the Registrar.

(2) The Registrar may direct that the whole or a specified part of the costs and expenses properly incurred by a liquidator in proceedings under this section must be paid out of money of the Registrar.

(3) Subject to a direction under subsection (2), to any Charges on the Property of the Company and to any debt to which this Act gives priority, all such costs and expenses are payable out of that Property as part of the costs of the winding up.

*When liquidator has qualified privilege*

**436.** A liquidator has qualified privilege in respect of a statement that he or she makes, whether orally or in writing, in the course of his or her duties as liquidator.

**PART 36—ARRANGEMENTS AND RECONSTRUCTIONS***Power to compromise with creditors and Members*

**437.**—(1) Where a compromise or arrangement is proposed between a Company and its creditors or any class of them or between the Company and its Members or any class of them, the Court may, on the application of the Company or of any creditor or Member of the Company, or, in the case of a Company being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors, or of the Members of the Company or class of Members, as the case may be, to be summoned in such manner as the Court directs.

(2) The Court must not make an order pursuant to an application under subsection (1) unless—

- (a) 14 days' notice of the hearing of the application, or such lesser period of notice as the Court or the Registrar permits, has been given to the Registrar, together with a draft explanatory statement relating to the proposed compromise or arrangement; and
- (b) the Court is satisfied that the Registrar has had a reasonable opportunity—
  - (i) to examine the terms of the proposed compromise or arrangement to which the application relates and a draft explanatory statement relating to the proposed compromise or arrangement; and
  - (ii) to make submissions to the Court in relation to the proposed compromise or arrangement and the draft explanatory statement.

(3) In subsection (2), “draft explanatory statement”, in relation to a proposed compromise or arrangement between a Company and its creditors or any class of them or between a Company and its Members or any class of them, means a statement—

- (a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the Directors of the Company, whether as Directors, as Members or creditors of the Company or otherwise, and the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and
- (b) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or Member of the Company whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the Directors of the Company and has not previously been disclosed to the creditors or Members of the Company.

(4) A compromise or arrangement is binding on the creditors, or on a class of creditors, or on the Members, or on a class of Members, as the case may be, of the Company and on the Company or, if the Company is in the course of being wound up, on the liquidator and contributories of the Company, if, and only if—

- (a) at a meeting convened in accordance with an order of the Court under subsection (1)—
  - (i) in the case of a compromise or arrangement between a Company and its creditors or a class of creditors – the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the Company amount in the aggregate to at least 75% of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and
  - (ii) in the case of a compromise or arrangement between a Company and its Members or a class of Members – a resolution in favour of the compromise or arrangement is—
    - A. unless the Court orders otherwise – passed by a majority in number of the Members, or Members in that class, present and voting (either in person or by proxy); and
    - B. if the Company has a share capital – passed by 75% of the votes cast on the resolution; and
- (b) it is approved by order of the Court.

(5) A copy of every such order made under subsection (4) must be annexed to every copy of the Articles of Association of the Company issued after the order has been made.

(6) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(7) If—

- (a) the Court has granted its approval to a compromise or arrangement subject to an alteration or condition;
- (b) the Company concerned contravenes—
  - (i) in the case of an alteration – the provision or provisions of the compromise or arrangement to which the alteration relates; or
  - (ii) in the case of a condition – the condition; and
- (c) the Court is satisfied that a person suffered loss or damage as a result of the contravention,

the Court may make such order as it thinks just.

(8) The Court must not approve a compromise or arrangement under this section unless there is produced to the Court a statement in writing by the Registrar stating that the Registrar has no objection to the compromise or arrangement, but the Court need not approve a compromise or arrangement merely because of such a statement.

(9) Except with the leave of the Court, a person must not be appointed to administer, and must not administer, a compromise or arrangement approved under this Act between a Company and its creditors or any class of them or between the Company and its Members or any class of them, if the person—

- (a) is a mortgagee of any Property of the Company;
- (b) is an Auditor of the Company;
- (c) is a Director, Company secretary, senior manager or employee of the Company;
- (d) is a Director, Company secretary, senior manager or employee of a Company that is a mortgagee of Property of the Company;
- (e) is not a registered liquidator; or
- (f) is a Director, Company secretary, senior manager or employee of a Related Body Corporate of the Company.

(10) Subsection (9) does not disqualify a person from administering a compromise or arrangement under an appointment validly made under a Repealed Act.

*Information as to compromises with creditors and Members*

**438.**—(1) Where a meeting of creditors or any class of creditors or of Members or any class of Members is convened under section 437, the Company must—

- (a) with every notice convening the meeting which is sent to a creditor or Member, send a statement (in this section called the “explanatory statement”) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the Directors of the Company, whether as Directors or as Members or as creditors of the Company or otherwise, and the effect on those interests of the compromise or arrangement, in so far as that effect 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, include either a copy of the explanatory 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 the explanatory statement.

(2) Where the compromise or arrangement affects the rights of Debenture Holders of the Company, the explanatory statement must specify any material interests of the trustees for the Debenture Holders, whether as such trustees, as Members or creditors of the Company or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

(3) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained by creditors or Members entitled to attend the meeting, every such creditor or Member must, on making application in the manner indicated by the notice, be furnished by the Company, free of charge, with a copy of the explanatory statement.

*Provisions for facilitating reconstruction and amalgamation of Companies*

**439.**—(1) Where an application is made to the Court under section 437 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 Company or Companies or the amalgamation of any two 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 called the “transferor company”) is to be transferred to another Company (in this section called the “transferee company”), the Court may, either by the order approving the compromise or arrangement or by any subsequent order, make provision 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 any 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 any transferor company;
- (d) the deregistration, without winding up, of any transferor company;
- (e) the provision to be made for any person who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of Property or liabilities, that Property must, by virtue of the order, be transferred to and vest in, and those liabilities must, by virtue of the order, be transferred to and become the liabilities of, the transferee company and, in the case of any Property, if the order so directs, freed from any Charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, every Company in relation to which the order is made must Lodge a copy of the order with the Registrar, using the Prescribed Form, within 14 days of the order being made.

(4) In this section, “liabilities” includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously.

*Power to acquire Shares of Members dissenting from scheme or contract approved by majority*

**440.**—(1) In this section—

“dissenting member” in relation to a scheme or contract, means a Member who has not assented to the scheme or contract or who has failed to transfer his, her or its Shares in accordance with the scheme or contract; and

“excluded shares” in relation to a scheme or contract involving a transfer to a person of Shares in a class of Shares in a Company, means Shares in that class that, when the offer relating to the scheme or contract is made, are held by—

- (a) in any case – the person or a nominee of the person; or
- (b) if the person is a Company or Foreign Company – a Subsidiary of the Company or Foreign Company.

(2) Where a scheme or contract (not being a scheme or contract arising out of the making of offers under a Bidder’s Statement) involving the transfer of Shares or any class of Shares in a Company (in this section referred to as the “transferor company”) to another Company (in this section referred to as the “transferee company”) has, within 4 months



after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than 90% in value of the Shares whose transfer is involved (other than excluded shares), the transferee company may, at any time within 2 months after the expiration of the said 4 months, give notice in the Prescribed Form to any dissenting member that the transferee wishes to acquire the Shares held by the dissenting member.

(3) When such a notice is given, the transferee company must, unless, on, an application made by the dissenting member within 28 days from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those Shares on the terms on which, under the scheme or contract, the Shares of the approving Members are to be transferred to the transferee company.

(4) Where alternative terms were offered to the approving Members, the dissenting member is entitled to elect not later than the end of 28 days after the date on which the notice is given, which of those terms the dissenting member prefers and, if the dissenting member fails to make the election within the time allowed by this subsection, the transferee company may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the Shares of the dissenting member.

(5) Despite subsections (3) and (4), if the number of votes attached to excluded shares is more than 10% of in value of the value of the excluded shares and that of the Shares (other than the excluded shares) to be transferred, those sections do not apply unless—

- (a) the transferee company offers the same terms to all holders of the Shares (other than excluded shares) to be transferred under the scheme or contract; and
- (b) the holders who approve the scheme or contract hold Shares to which are attached at least 90% of the votes attached to the Shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those Shares.

(6) For the purposes of this subsection, two or more persons registered as holding Shares jointly are to be counted as one person.

(7) Where, in pursuance of any such scheme or contract, the transferee company becomes beneficially entitled to Shares in the transferor company which, together with any other Shares in the transferor company to which the transferee company or a Related Body Corporate is beneficially entitled, have attached to them at least 90% in value of the Shares in the transferor company or any class of those Shares, then—

- (a) the transferee company must, within 28 days from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the Prescribed Form to the holder of the remaining Shares or of the remaining Shares of that class, as the case may be, who have not assented to the scheme or contract; and

- (b) any such holder may, within 3 months from the giving of the notice to him or her, require the transferee company to acquire the Shares in question, and, where alternative terms were offered to the approving Members, elect which of those terms he, she or it will accept.

(8) When a notice is given under subsection (7)(b), the transferee company must be entitled and bound to acquire those Shares on the terms on which, under the scheme or contract, the Shares of the approving Members were to be transferred to the transferee company.

(9) Subsections (10) and (11) apply where a notice has been given under subsection (2) or (7) unless the Court, on an application made by the dissenting members, orders to the contrary.

(10) The transferee company must, within 14 days after —

- (a) the end of 28 days after the day on which the notice was given; or
- (b) if an application has been made to the Court by a dissenting member — the application is disposed of;

whichever last happens —

- (i) send a copy of the notice to the transferor company together with an instrument of transfer that relates to the Shares that the transferee company is entitled to acquire under this section and is executed, on the Member's behalf, by a person appointed by the transferee and, on the transferee company's own behalf, by the transferee company; and
- (ii) pay, allot or transfer to the transferor company the consideration for the Shares.

(11) When the transferee company has complied with subsection (10), the transferor company must register the transferee company as the holder of the Shares.

(12) All sums received by the transferor company under this section must be paid into a separate bank account and those sums, and any other consideration so received, must be held by that person in trust for the several persons entitled to the Shares in respect of which they were respectively received.

## PART 37—RECEIVERS AND MANAGERS

### *Persons not to act as Receivers or Managers*

**441.** A person is not qualified to be appointed, and must not act, as a Receiver or Manager of Property of a Company (the “Relevant Company”) if the person —

- (a) is a Company;
- (b) is a mortgagee of Property of the Relevant Company;

- (c) is an Auditor or a Director, Secretary, senior manager or employee of the Relevant Company;
- (d) is a Director, Secretary, senior manager or employee of a Company that is a mortgagee of Property of the Relevant Company;
- (e) is not a registered liquidator; or
- (f) is a Director, Secretary, senior manager or employee of a Related Body Corporate of the Relevant Company.

*Disqualification of undischarged bankrupt from acting as a Receiver or Manager*

**442.** A person, being an undischarged bankrupt, must not act as a Receiver or Manager of the Property of a Company on behalf of Debenture Holders, unless the—

- (a) appointment under which the person acts and the bankruptcy were both before the appointed day; or
- (b) person he or she acts under an appointment made by order of the Court.

*Power to appoint Official Receiver as a Receiver for Debenture Holders or creditors*

**443.** Where an application is made to the Court to appoint a Receiver on behalf of the Debenture Holders or other creditors of a Company which is being wound up by the Court, the Official Receiver may be so appointed.

*Receivers and Managers appointed out of Court*

**444.—(1)** A Receiver or Manager of the Property of a Company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of the person's functions and, on any such application, the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as the Court thinks just.

(2) A Receiver or Manager of the Property of a Company appointed under the powers contained in any instrument must, to the same extent as if the person had been appointed by order of a Court, be—

- (a) personally liable on any contract entered into by the person in the performance of the person's functions as of the Property of a Company, except in so far as the contract otherwise provides; and
- (b) entitled in respect of that liability to indemnity out of the assets.

(3) Nothing in subsection (2) must be taken as limiting any right to indemnity which the person would have apart from this subsection, or as limiting the person's liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

*Court may declare whether putative receiver or manager is validly acting*

**445.**—(1) Where there is doubt, on a specific ground, about—

- (a) whether a purported appointment of a person as Receiver or Manager of Property of a Company is valid; or
- (b) whether a person who has entered into possession, or assumed control, of Property of a Company did so validly under the terms of a Charge on that Property,

the person, the Company or any of the Company's creditors may apply to the Court for an order under subsection (2).

(2) On an application, the Court may make an order declaring whether or not—

- (a) the purported appointment was valid; or
- (b) the person entered into possession, or assumed control, validly under the terms of the Charge,

as the case may be, on the ground specified in the application or on some other ground.

*Powers of Receiver or Manager*

**446.**—(1) Subject to this section, a Receiver or Manager of Property of a Company has power to do, in Fiji and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the Receiver or Manager was appointed.

(2) Without limiting the generality of subsection (1), but subject to any provision of the Court order by which, or the instrument under which, the Receiver or Manager was appointed, a Receiver or Manager of Property of a Company has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the Receiver or Manager was appointed—

- (a) to enter into possession and take control of Property of the Company in accordance with the terms of that order or instrument;
- (b) to lease, let on hire or dispose of Property of the Company;
- (c) to grant options over Property of the Company on such conditions as the Receiver or Manager thinks fit;
- (d) to borrow money on the security of Property of the Company;
- (e) to insure Property of the Company;
- (f) to repair, renew or enlarge Property of the Company;
- (g) to convert Property of the Company into money;
- (h) to carry on any business of the Company;

- (i) to take on lease or on hire, or to acquire, any Property necessary or convenient in connection with the carrying on of a business of the Company;
- (j) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the Company;
- (k) to draw, accept, make and indorse a bill of exchange or promissory note;
- (l) to engage or discharge employees on behalf of the Company;
- (m) to appoint a solicitor, accountant or other professionally qualified person to assist the Receiver or Manager;
- (n) to appoint an agent to do any business that the Receiver or Manager is unable to do, or that it is unreasonable to expect the Receiver or Manager to do, in person;
- (o) where a debt or liability is owed to the Company – to prove the debt or liability in a bankruptcy, Insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;
- (p) if the Receiver or Manager was appointed under an instrument that created a Charge on uncalled share capital of the Company –
  - (i) to make a call in the name of the Company for the payment of money unpaid on the Company's Shares; or
  - (ii) on giving a proper indemnity to a liquidator of the Company – to make a call in the liquidator's name for the payment of money unpaid on the Company's Shares;
- (q) to enforce payment of any call that is due and unpaid, whether the calls were made by the Receiver or Manager or otherwise;
- (r) to make or defend an application for the winding up of the Company; and
- (s) to refer to arbitration any question affecting the Company.

(3) The conferring on a Receiver or Manager of powers in relation to Property of a Company by this section does not affect any rights in relation to that Property of any other person other than the Company.

(4) In this section, a reference, in relation to a Receiver or Manager, to Property of a Company is, unless the contrary intention appears, a reference to the Property of the Company in relation to which the Receiver or Manager was appointed.

*Duties in relation to bank accounts and Financial Records*

**447.**—(1) A Receiver or Manager (in this section called a “controller”) must—

- (a) open and maintain an account with a Financial Institution in Fiji, bearing—
  - (i) the controller’s own name;
  - (ii) in the case of a Receiver of the Property – the title “receiver”;
  - (iii) otherwise – the title “controller”; and
  - (iv) the Company’s name,
 or two or more such accounts;
- (b) within 3 Business Days after money of the Company comes under the control of the controller, pay that money into such an account that the controller maintains;
- (c) ensure that no such account that the controller maintains contains money other than money of the Company that comes under the control of the controller; and
- (d) keep such Financial Records as correctly record and explain all transactions that the controller enters into as the controller.

(2) Any Director, creditor or Member of a Company may, unless the Court otherwise orders, personally or by an agent, inspect records kept by a controller of Property of the Company for the purposes of subsection (1)(d).

*Notification that Receiver or Manager appointed*

**448.**—(1) Where a Receiver or Manager of the Property of a Company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the Company or the Receiver or Manager or the liquidator of the Company, being a document on or in which the name of the Company appears, must contain a statement that a Receiver or Manager has been appointed.

(2) If default is made in complying with the requirements of this section, the Company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any Officer of the Company, any liquidator of the Company and any Receiver or Manager, must be deemed to commit an offence.

*Power of Court to fix remuneration on application of liquidator*

**449.**—(1) The Court may, on an application by the liquidator of a Company, by order, fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as Receiver or Manager of the Property of the Company.

(2) The power of the Court under subsection (1) must, where no previous order has been made in this respect under that subsection—

- (a) extend to fixing the remuneration for any period before the making of the order or the application for the order;

- (b) be exercisable, notwithstanding that the Receiver or Manager has died or ceased to act before the making of the order or the application for the order; and
- (c) where the Receiver or Manager has been paid or has retained for the Receiver or Manager's remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring the Receiver or Manager, or Receiver or Manager's legal representatives to account for the excess or such part of the remuneration as may be specified in the order.

(3) The Court may, from time to time, on an application made either by the liquidator or by the Receiver or Manager, vary or amend an order made under subsection (1).

*Provisions as to information where Receiver or Manager appointed*

**450.**—(1) Where a Receiver or Manager of the whole or substantially the whole of the Property of the Company is appointed on behalf of the holders of any Debentures of the Company secured by a floating Charge, then, subject to the provisions of this section and section 451 —

- (a) the Receiver or Manager must immediately send notice to the Company of the Receiver or Manager's appointment;
- (b) within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the Receiver or Manager, there must be made out and submitted to the receiver, in accordance with section 451, a statement in the Prescribed Form as to the Affairs of the Company; and
- (c) the Receiver or Manager must, within 2 months after receipt of the statement, send to—
  - (i) the Registrar and to the Court, a copy of the statement and of any comments the Receiver or Manager sees fit to make in respect of the statement and, in the case of the Registrar, also a summary of the statement;
  - (ii) the Company, a copy of any comment the Receiver or Manager sees fit to make in respect of the statement and provide to the Registrar and the Court or, if the receiver does not see fit to make any comment, a notice to that effect; and
  - (iii) any trustee for the Debenture Holders on whose behalf the receiver was appointed and, so far as the Receiver or Manager is aware of their addresses, to all such Debenture Holders, a copy of the said summary.

(2) The receiver must—

- (a) within 2 months, or such longer period as the Court may allow, after the expiration of the period of 12 months from the date of the receiver's appointment; and

- (b) of every subsequent period of 12 months, and within 2 months, or such longer period as the Court may allow, after the Receiver or Manager ceases to act as Receiver or Manager of the Property of the Company,

send to the Registrar, to any trustee for the Debenture Holders of the Company on whose behalf the Receiver or Manager was appointed, to the Company and (so far as the Receiver or Manager is aware of their addresses) to all such Debenture Holders an abstract in the Prescribed Form showing the Receiver or Manager's receipts and payments during that period of 12 months or where the Receiver or Manager ceases to act, during the period from the end of the period to which the last preceding abstract related up to the date of the Receiver or Manager ceasing to act, and the aggregate amounts of the Receiver or Manager's receipts and of the Receiver or Manager's payments during all preceding periods since the person's appointment.

(3) This section and section 451 must apply where the Company is being wound up, notwithstanding that the Receiver or Manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) Nothing in subsection (2) must be taken to prejudice the duty of the Receiver or Manager to render proper accounts of the person's receipts and payments to the persons to whom, and at the times at which, he or she may be required to do so apart from that subsection.

*Special provisions as to statement submitted to Receiver or Manager*

**451.**—(1) The statement as to the Affairs of a Company required by section 450 to be submitted to the Receiver or Manager (or the Receiver or Manager's successor) must show, as at the date of the Receiver or Manager's appointment—

- (a) the particulars of the Company's assets, debts and liabilities;
- (b) the names, postal addresses and occupations of its creditors;
- (c) the securities held by its creditors respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed in the regulations made under this Act.

(2) The statement must be submitted by, and be verified by affidavit by, one or more of the persons who are, at the date of the Receiver or Manager's appointment, the Directors and by a person who is, at that date, a Secretary of the Company, or by such of the persons hereafter in this subsection mentioned as the Receiver or Manager (or the Receiver or Manager's successor), subject to the direction of the Court, may require to submit and verify the statement, 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 Receiver or Manager's appointment;
- (c) who are in the employment of the Company, or have been in the employment of the Company within 1 year before the date of the receiver's appointment, and are, in the opinion of the Receiver or Manager, capable of giving the information required;
- (d) who are or have been within 1 year before the date of the receiver's appointment, Officers of or in the employment of a Company which is, or within 1 year before the date of the Receiver or Manager's appointment was, an Officer of the Company to which the statement relates.

(3) Any person making the statement and affidavit must be allowed, and must be paid by the Receiver or Manager (or the Receiver or Manager's successor) out of the Receiver or Manager's receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Receiver or Manager (or the Receiver or Manager's successor) may consider reasonable, subject to an appeal to the Court.

*Delivery to the Registrar of accounts of Receivers and Managers*

**452.**—(1) Except where section 450(2) applies, every Receiver or Manager of the Property of a Company who has been appointed under the powers contained in any instrument must—

- (a) within 28 days, or such longer period as the Registrar may allow, after the expiration of the period of 6 months from the date of his or her appointment and of every subsequent period of 6 months; and
- (b) within 28 days after the Receiver or Manager ceases to act as Receiver or Manager,

deliver to the Registrar, for registration, an abstract in the Prescribed Form showing the Receiver or Manager's receipts and payments during that period of 6 months or, where the Receiver or Manager ceases to act, during the period from the end of the period to which the last preceding abstract related up to the date of ceasing to act, and the aggregate amount of his or her receipts and of his or her payments during all preceding periods since his or her appointment.

*Enforcement of duty of Receivers or Managers to make returns, etc.*

**453.**—(1) If any Receiver or Manager of the Property of a Company—

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a Receiver or Manager is, by law, required to file, deliver, make or give, fails to make good the default within 14 days after the service on the Receiver or Manager of a notice requiring the Receiver or Manager to do so; or

- (b) having been appointed under the powers contained in any instrument, has, after being required, at any time, by the liquidator of the Company so to do, failed to render proper accounts of his or her receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him or her,

the Court may, on an application made for the purpose, make an order directing the Receiver or Manager, as the case may be, to make good the default, within such time as may be specified in the order.

(2) In the case of any such default under subsection (1)(a), an application for the purposes of this section may be made by any Member or creditor of the Company or by the Registrar and, in the case of any such default under subsection (1)(a), the application must be made by the liquidator and, in either case, the order may provide that all costs of and incidental to the application must be borne by the Receiver or Manager, as the case may be.

(3) Nothing in this section must be taken to prejudice the operation of any provision of this Act imposing penalties on Receivers or Managers in respect of any such default under subsection (1).

*Liability of controller*

**454.**—(1) A Receiver or Manager, or any other authorised person, who, whether as agent for the Company concerned or not, enters into possession or assumes control of any Property of a Company for the purpose of enforcing any Charge is, notwithstanding any agreement to the contrary, but without prejudice to the person's rights against the Company or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or Property hired, leased, used or occupied.

(2) Where—

- (a) a Receiver or Manager (in this subsection called the “controller”) enters into possession or assumes control of Property of a Company;
- (b) the controller purports to have been properly appointed as a Receiver or Manager in respect of that Property under a power contained in an instrument, but has not been properly so appointed; and
- (c) civil proceedings in a Fiji court arise out of an act alleged to have been done by the controller,

the Court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that—

- (i) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and

- (ii) a person who purported to appoint the controller as Receiver or Manager be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

*Liability of controller under pre-existing agreement about Property used by Company*

**455.**—(1) This section applies if—

- (a) a Receiver or Manager (in this subsection called the “controller”) enters into possession or assumes control of Property of a Company;
- (b) under an agreement made before the day on which the controller enters into possession (the “control day”), the Company continues after that day to use or occupy, or to be in possession of, Property (the “third party Property”) of which someone else is the owner or lessor; and
- (c) the controller is controller of the third party Property.

(2) Subject to subsections (4) and (7), the controller is liable for so much of the rent or other amounts payable by the Company under the agreement as is attributable to a period beginning more than 7 days after the control day and throughout which—

- (a) the Company continues to use or occupy, or to be in possession of, the third party Property; and
- (b) the controller is controller of the third party Property.

(3) Within 7 days after the control day, the controller may give to the owner or lessor a notice that specifies the third party Property and states that the controller does not propose to exercise rights in relation to that Property as controller of the Property, whether on behalf of the Company or anyone else.

(4) Despite subsection (2), the controller is not liable for so much of the rent or other amounts payable by the Company under the agreement as is attributable to a period during which a notice under subsection (3) is in force, but such a notice does not affect a liability of the Company.

(5) A notice under subsection (3) ceases to have effect if—

- (a) the controller revokes it by writing given to the owner or lessor; or
- (b) the controller exercises, or purports to exercise, a right in relation to the third party Property as controller of the Property, whether on behalf of the Company or anyone else.

(6) For the purposes of subsection (5), the controller does not exercise, or purport to exercise, a right as mentioned in subsection (5)(b) merely because the controller continues to be in possession, or to have control, of the third party Property, unless the controller—

- (a) also uses the Property; or
- (b) asserts a right, as against the owner or lessor, so to continue.

(7) Subsection (2) does not apply in so far as a Court, by order, excuses the controller from liability, but an order does not affect a liability of the Company.

(8) The controller is not taken because of subsection (2)—

- (a) to have adopted the agreement; or
- (b) to be liable under the agreement otherwise than as mentioned in subsection (2).

*Duty of care in exercising power of sale*

**456.**—(1) In exercising a power of sale in respect of Property of a Company, a Receiver or Manager must take all reasonable care to sell the Property for—

- (a) if, when it is sold, it has a market value – not less than that market value; or
- (b) otherwise – the best price that is reasonably obtainable, having regard to the circumstances existing when the Property is sold.

(2) Nothing in subsection (1) limits the generality of anything in Division 3 of Part 10.

*Receiver's power to carry on Company's business during winding up*

**457.**—(1) A Receiver or Manager of Property of a Company that is being wound up may—

- (a) with the written approval of the Company's liquidator or with the approval of the Court, carry on the Company's business either generally or as otherwise specified in the approval; and
- (b) do whatever is necessarily incidental to carrying on that business under paragraph (a).

(2) Subsection (1) does not—

- (a) affect a power that the Receiver or Manager has otherwise than under that subsection; or
- (b) empower the Receiver or Manager to do an act that he or she would not have power to do if the Company were not being wound up.

(3) A Receiver or Manager of Property of a Company who carries on the Company's business under subsection (1) does so—

- (a) as agent for the Company; and
- (b) in the person's capacity as Receiver or Manager of Property of the Company.

(4) The consequences of subsection (3) include, but are not limited to, the following—

- (a) for the purposes of section 454(1), a debt that the Receiver or Manager incurs in carrying on the business as mentioned in subsection (3) is incurred in the course of the receivership;
- (b) a debt or liability that the Receiver or Manager incurs in so carrying on the business is not a cost, charge or expense of the winding up.

*Qualified privilege in certain cases*

**458.** A Receiver or Manager, has qualified privilege in respect of any matter contained in a statement, report or comments the person is required to Lodge under this Part.

*Court may remove controller for misconduct*

**459.** Where, on the application of a Company, the Court is satisfied that a Receiver or Manager of Property of the Company has been guilty of misconduct in connection with performing or exercising any of the person's functions and powers, the Court may order that, on and after a specified day, the person cease to act as Receiver or Manager or give up possession or control, as the case requires, of Property of the Company.

*Court may remove redundant controller*

**460.—**(1) The Court may order that, on and after a specified day, a Receiver or Manager of Property of a Company ("Controller")—

- (a) cease to act as Receiver or Manager, or give up possession or control, as the case requires, of Property of the Company; or
- (b) act as Receiver or Manager, or continue in possession or control, as the case requires, only of specified Property of the Company.

(2) However, the Court may only make an order under subsection (1) if satisfied that the objectives for which the controller was appointed, or entered into possession or took control of Property of the Company, as the case requires, have been achieved, so far as is reasonably practicable, except in relation to any Property specified in the order under subsection (1)(b).

(3) For the purposes of subsection (2), the Court must have regard to—

- (a) the Company's interests;
- (b) the interests of the holder of the Charge that the controller is enforcing;
- (c) the interests of the Company's other creditors; and
- (d) any other relevant matter.

(4) The Court may only make an order under subsection (1) on the application of a liquidator appointed for the purposes of winding up the Company in Insolvency.

(5) An order under subsection (1) may also prohibit the holder of the Charge from doing any or all of the following, except with the leave of the Court—

- (a) appointing a person as Receiver or Manager of Property of the Company under a power contained in an instrument relating to the Charge;
- (b) entering into possession, or taking control, of such Property for the purpose of enforcing the Charge;
- (c) appointing a person so to enter into possession or take control (whether as agent for the Chargee or for the Company).

*Effect of sections 459 and 460*

**461.**—(1) Except as expressly provided in section 459 or 460, an order under that section does not affect a Charge on Property of a Company.

(2) Nothing in section 459 or 460 limits any other power of the Court to remove, or otherwise deal with, a Receiver or Manager of Property of a Company.

PART 38—WINDING UP GENERALLY

*Division 1—Modes of Winding Up*

*Modes of winding up*

**462.**—(1) The winding up of a Company may be either—

- (a) by the Court;
- (b) voluntary; or
- (c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a Company in any of those modes.

*Division 2—Liability of Contributories*

*General liability of contributory*

**463.** Subject to this Part, a present or past Member is liable to contribute to the Company's Property to an amount sufficient to—

- (a) pay the Company's debts and liabilities and the costs, charges and expenses of the winding up; and
- (b) adjust the rights of the contributories among themselves.

*Company Limited by Shares*

**464.** If the Company is a Company Limited by Shares, a Member need not contribute more than the amount (if any) unpaid on the Shares in respect of which the Member is liable as a present or past Member.

*Company Limited by Guarantee*

**465.** If the Company is a Company Limited by Guarantee, a Member need not contribute more than the amount the Member has undertaken to contribute to the Company's Property if the Company is wound up.

*Company Limited by Shares and Guarantee*

**466.** If the Company is a Company Limited by Shares and Guarantee, neither of sections 464 and 465 applies and the Member need not contribute more than the aggregate of the following—

- (a) the amount (if any) unpaid on Shares in respect of which the Member is liable as a present or past Member;
- (b) the amount that the Member has undertaken to contribute to the Company's Property if the Company is wound up.

*Liability of past Members*

**467.—**(1) A past Member need not contribute in respect of a debt or liability of the Company contracted after the past Member ceases to be a Member unless the existing Members are unable to satisfy the contributions they are liable to make under this Act.

(2) Subsections (3), (4) and (5) only apply if the existing Members are unable to satisfy the contributions they are liable to make under this Act.

(3) If the Company is an Unlimited Liability Company, the amount that a Member or a person who is a past Member, has undertaken to contribute to the Company's Property if the Company is wound up, is unlimited.

(4) If the Company is a Company Limited by Shares and became a Company Limited by Shares by virtue of a change of Company type from an Unlimited Liability Company, the amount that a Member who is a past Member, has undertaken to contribute to the Company's Property if the Company is wound up, is—

- (a) unlimited in respect of the debts and liabilities of the Company contracted before the change of company type; and
- (b) limited in respect of the debts and liabilities of the Company contracted after the change of company type.

(5) If the Company is an Unlimited Liability Company and became an Unlimited Liability Company by virtue of a change of Company type from a Company Limited by Shares to an Unlimited Liability Company, the amount that a Member who is a past Member has undertaken to contribute to the Company's Property if the Company is wound up is—

- (a) limited in respect of the debts and liabilities of the Company contracted before the change of company type; and
- (b) unlimited in respect of the debts and liabilities of the Company contracted after the change of company type.

*Liability on certain contracts*

**468.** Nothing in this Act invalidates a provision, in a policy of insurance or other contract, whereby the liability of individual Members on the policy or contract is restricted or whereby the funds of the Company are alone made liable in respect of the policy or contract.

*Death of contributory*

**469.** If a contributory dies, whether before or after being placed on the list of contributories—

- (a) his or her personal representatives are liable in due course of administration to contribute to the Company's Property in discharge of his or her liability to contribute and are contributories accordingly; and
- (b) if his or her personal representatives default in paying any money that they are ordered to pay – proceedings may be taken for administering his or her estate and for compelling payment, out of the assets of that estate, of the money due.

*Bankruptcy of contributory*

**470.** If a contributory becomes an Insolvent under administration, or assigns his or her estate for the benefit of his or her creditors, whether before or after being placed on the list of contributories—

- (a) his or her trustee is to represent him or her for the purposes of the winding up and is to be a contributory accordingly; and
- (b) calls already made, and the estimated value of his or her liability to future calls, may be proved against his or her estate.

*Division 3—Proof and Ranking of Claims**Debts of all descriptions may be proved*

**471.** In every winding up (subject, in the case of Insolvent Companies, to the application, in accordance with the provisions of this Act, of the law of bankruptcy) all debts payable on a contingency, and all claims against the Company, present or future, certain or contingent, ascertained or sounding only in damages, must be admissible to proof against the Company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

*Insolvent Companies – mutual credit and set off*

**472.—**(1) Subject to subsection (2), where there have been mutual credits, mutual debts or other mutual dealings between an Insolvent Company that is being wound up and a person who wants to have a debt or claim admitted against the Company—

- (a) an account is to be taken of what is due from the one party to the other in respect of those mutual dealings;



- (b) the sum due from the one party is to be set off against any sum due from the other party; and
- (c) only the balance of the account is admissible to proof against the Company, or is payable to the Company, as the case may be.

(2) A person is not entitled under this section to claim the benefit of a set off if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, the person had notice of the fact that the Company was Insolvent.

*Preferential payments*

**473.**—(1) Notwithstanding the provisions of any other written law, in the winding up of a Company, there shall be paid in priority to all other debts—

- (a) all Government taxes and local rates due from the Company at the relevant date and having become due and payable within 12 months next before that date, not exceeding in the whole 1 year's assessment and all Government taxes legally withheld by the Company from payments made by it to employees, Members, and others;
- (b) all Government issued rents not more than 1 year in arrears;
- (c) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant (not being a Director) in respect of services rendered to the Company during 4 months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;
- (d) unless the Company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another Company, or unless the Company has, at the commencement of the winding up, under any contract with insurers, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act (Cap. 94), being amounts which have accrued before the relevant date;
- (e) unless the Company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another Company, all amounts due in respect of contributions payable during the period of 12 months immediately preceding the relevant date by the Company as the employer of any person under the Fiji National Provident Fund Act (Cap. 219).

(2) Notwithstanding anything in subsection (1)(c), the sum to which priority is to be given under that paragraph shall not, in the case of any claimant, exceed \$600, provided that, where a claimant under that subsection is a labourer in husbandry who has entered into a contract for the payment of a portion of his or her wages in a lump sum at the end of the year of hiring, that person shall have priority in respect of the whole of such sum, or a part of the compensation, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act (Cap. 94), is a weekly payment, the amount due in respect of the compensation shall, for the purposes of subsection (1)(d), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed, if the employer has made an application for that purpose under the said Act.

(4) Where any payment has been made to any clerk, or servant (not being a Director) or to any workman or labourer in the employment of a Company, on account of wages or salary, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The above debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case, they shall abate in equal proportions; and
- (b) so far as the assets of the Company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of Debentures under any floating Charge created by the Company, and be paid accordingly out of any Property comprised in or subject to that Charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the above debts shall be discharged so far as the assets are sufficient to meet them.

(7) In the event of a landlord or other person distraining or having distrained any goods or effects of the Company within 6 months next before the date of a winding up order, the debts to which priority is given by this section shall be a first Charge on the goods or effects so distrained on, or the proceeds of the sale, provided that, in respect of any money paid under any such Charge, the landlord or other person shall have the same rights or priority as the person to whom the payment is made.

(8) For the purposes of this section—

- (a) any remuneration in respect of a period of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the Company during that period;
- (b) “the relevant date” means—
  - (i) in the case of a Company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of an interim liquidator, or, if no such appointment was made, the date of the winding up order, unless, in either case, the Company had commenced to be wound up voluntarily before that date; and

- (ii) in any case where sub-paragraph (i) does not apply, the date of the passing of the resolution for the winding up of the Company.

*Division 4—Effect of Winding up on Antecedent and Other Transactions*

*Unfair preferences*

**474.**—(1) A transaction is an unfair preference given by a Company to a creditor of the Company if, and only if—

- (a) the Company and the creditor are parties to the transaction (even if someone else is also a party); and
- (b) the transaction results in the creditor receiving from the Company, in respect of an unsecured debt that the Company owes to the creditor, more than the creditor would receive from the Company in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a winding up of the Company,

even if the transaction is entered into, is given effect to, or is required to be given effect to, because of an order of the Court or a direction by an agency (in this Part called an “Unfair Preference”).

(2) For the purposes of subsection (1), a secured debt is taken to be unsecured to the extent of so much of it (if any) as is not reflected in the value of the security.

*Uncommercial transactions*

**475.**—(1) A transaction of a Company is an uncommercial transaction of the Company if, and only if, it may be expected that a reasonable person in the Company’s circumstances would not have entered into the transaction, having regard to—

- (a) the benefits (if any) to the Company of entering into the transaction;
- (b) the detriment to the Company of entering into the transaction;
- (c) the respective benefits to other parties to the transaction of entering into it; and
- (d) any other relevant matter,

(in this Part called an “Uncommercial Transaction”).

(2) A transaction may be an Uncommercial Transaction of a Company because of subsection (1)—

- (a) whether or not a creditor of the Company is a party to the transaction; and
- (b) even if the transaction is given effect to, or is required to be given effect to, because of an order of the Court or a direction by an agency.

*Insolvent transactions*

**476.** A transaction of a Company is an insolvent transaction of the Company if, and only if, it is an Unfair Preference given by the Company, or an Uncommercial Transaction of the Company, and—

- (a) any of the following happens at a time when the Company is Insolvent—
  - (i) the transaction is entered into; or
  - (ii) an act is done, or an omission is made, for the purpose of giving effect to the transaction; or
- (b) the Company becomes Insolvent because of, or because of matters including—
  - (i) entering into the transaction; or
  - (ii) a person doing an act, or making an omission, for the purpose of giving effect to the transaction,

(in this Part called an “Insolvent Transaction”).

*Unfair loans to a Company*

**477.—(1)** A loan to a Company is unfair if, and only if—

- (a) the interest on the loan was extortionate when the loan was made, or has since become extortionate because of a variation; or
- (b) the Charges in relation to the loan were extortionate when the loan was made, or have since become extortionate because of a variation,

even if the interest is, or the Charges are, no longer extortionate (in this Part called an “Unfair Loan”).

(2) In determining if a loan to a Company is unfair under subsection (1), regard is to be had to the following matters as at that time—

- (a) the risk to which the lender was exposed;
- (b) the value of any security in respect of the loan;
- (c) the term of the loan;
- (d) the schedule for payments of interest and Charges and for repayments of principal;
- (e) the amount of the loan; and
- (f) any other relevant matter.

*Unreasonable Director related transactions*

**478.**—(1) A transaction of a Company is an unreasonable director related transaction of the Company if, and only if—

- (a) the transaction is—
  - (i) a payment made by the Company;
  - (ii) a conveyance, transfer or other disposition by the Company of Property of the Company;
  - (iii) the issue of Securities by the Company; or
  - (iv) the incurring by the Company of an obligation to make such a payment, disposition or issue;
- (b) the payment, disposition or issue is, or is to be, made to—
  - (i) a Director of the Company;
  - (ii) a spouse of a Director of the Company;
  - (iii) a Related Body Corporate of a Director of the Company; or
  - (iv) a person on behalf of, or for the benefit of, a person mentioned in sub-paragraph (i), (ii) or (iii); and
- (c) it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction, having regard to—
  - (i) the benefits (if any) to the Company of entering into the transaction;
  - (ii) the detriment to the Company of entering into the transaction;
  - (iii) the respective benefits to other parties to the transaction of entering into it; and
  - (iv) any other relevant matter,

(in this Part called an “Unreasonable Director Related Transaction”).

(2) To avoid doubt, if—

- (a) the transaction is a payment, disposition or issue; and
- (b) the transaction is entered into for the purpose of meeting an obligation the Company has incurred,

the test in subsection (1)(c) applies to the transaction taking into account the circumstances as they exist at the time when the transaction is entered into (rather than as they existed at the time when the obligation was incurred).

(3) A transaction may be an Unreasonable Director Related Transaction because of subsection (1)—

- (a) whether or not a creditor of the Company is a party to the transaction; and
- (b) even if the transaction is given effect to, or is required to be given effect to, because of an order of the Court or a direction by an agency.

*Voidable transactions*

**479.**—(1) The transaction is voidable if—

- (a) it is an Insolvent Transaction of the Company; and
- (b) it was entered into, or an act was done for the purpose of giving effect to it—
  - (i) during the 6 months ending on the Relation-Back Day; or
  - (ii) after that day but on or before the day when the winding up began.

(2) The transaction is voidable if—

- (a) it is an Insolvent Transaction, and also an Uncommercial Transaction, of the Company; and
- (b) it was entered into, or an act was done for the purpose of giving effect to it, during the 2 years ending on the Relation-Back Day.

(3) The transaction is voidable if—

- (a) it is an Insolvent Transaction of the Company;
- (b) a Related Body Corporate of the Company is a party to it; and
- (c) it was entered into, or an act was done for the purpose of giving effect to it, during the 4 years ending on the Relation-Back Day.

(4) The transaction is voidable if—

- (a) it is an Insolvent Transaction of the Company;
- (b) the Company became a party to the transaction for the purpose, or for purposes including the purpose, of defeating, delaying, or interfering with, the rights of any or all of its creditors on a winding up of the Company; and
- (c) the transaction was entered into, or an act done was for the purpose of giving effect to the transaction, during the 10 years ending on the Relation-Back Day.

(5) The transaction is voidable if it is an Unfair Loan to the Company made at any time on or before the day when the winding up began.

(6) The transaction is voidable if—

- (a) it is an Unreasonable Director Related Transaction of the Company; and

- (b) it was entered into, or an act was done for the purposes of giving effect to it—
  - (i) during the 4 years ending on the Relation-Back Day; or
  - (ii) after that day but on or before the day when the winding up began.

(7) A reference in this section to doing an act includes a reference to making an omission.

*Courts may make orders about voidable transactions*

**480.**—(1) Where, on the application of a Company's liquidator, the Court is satisfied that a transaction of the Company is voidable because of section 479, the Court may make one or more of the following orders—

- (a) an order directing a person to pay to the Company an amount equal to some or all of the money that the Company has paid under the transaction;
- (b) an order directing a person to transfer to the Company, Property that the Company has transferred under the transaction;
- (c) an order requiring a person to pay to the Company an amount that, in the Court's opinion, fairly represents some or all of the benefits that the person has received because of the transaction;
- (d) an order requiring a person to transfer to the Company, Property that, in the Court's opinion, fairly represents the application of either or both of the following—
  - (i) money that the Company has paid under the transaction;
  - (ii) proceeds of Property that the Company has transferred under the transaction;
- (e) an order releasing or discharging, wholly or partly, a debt incurred, or a security or guarantee given, by the Company under or in connection with the transaction;
- (f) if the transaction is an Unfair Loan and such a debt, security or guarantee has been assigned – an order directing a person to indemnify the Company in respect of some or all of its liability to the assignee;
- (g) an order providing for the extent to which, and the terms on which, a debt that arose under, or was released or discharged to any extent by or under, the transaction may be proved in a winding up of the Company;
- (h) an order declaring an agreement constituting, forming part of, or relating to, the transaction, or specified provisions of such an agreement, to have been void at and after the time when the agreement was made, or at and after a specified later time;

- (i) an order varying such an agreement as specified in the order and, if the Court thinks fit, declaring the agreement to have had effect, as so varied, at and after the time when the agreement was made, or at and after a specified later time;
  - (j) an order declaring such an agreement, or specified provisions of such an agreement, to be unenforceable.
- (2) Nothing in subsection (1) limits the generality of anything else in it.
- (3) An application under subsection (1) may only be made—
- (a) during the period beginning on the Relation-Back Day and ending—
    - (i) 3 years after the Relation-Back Day; or
    - (ii) 12 months after the first appointment of a liquidator in relation to the winding up of the Company,
 whichever is the later; or
  - (b) within such longer period as the Court orders on an application under this paragraph made by the liquidator during the paragraph (a) period.
- (4) If the transaction is a voidable transaction solely because it is an Unreasonable Director Related Transaction, the Court may make orders under subsection (1) only for the purpose of recovering for the benefit of the creditors of the Company the difference between—
- (a) the total value of the benefits provided by the Company under the transaction; and
  - (b) the value (if any) that it may be expected that a reasonable person in the Company's circumstances would have provided having regard to the matters referred to in section 478(1)(c).

*Transaction not voidable as against certain persons*

**481.**—(1) A Court is not to make under section 480 an order materially prejudicing a right or interest of a person other than a party to the transaction if it is proved that—

- (a) the person received no benefit because of the transaction; or
- (b) in relation to each benefit that the person received because of the transaction—
  - (i) the person received the benefit in good faith; and
  - (ii) at the time when the person received the benefit—
    - A. the person had no reasonable grounds for suspecting that the Company was Insolvent at that time or would become Insolvent as mentioned in section 476(b); and



- B. a reasonable person in the person's circumstances would have had no such grounds for so suspecting.

(2) The Court is not to make under section 480 an order materially prejudicing a right or interest of a person if the transaction is not an Unfair Loan to the Company, or an Unreasonable Director Related Transaction of the Company, and it is proved that—

- (a) the person became a party to the transaction in good faith;
- (b) at the time when the person became such a party—
  - (i) the person had no reasonable grounds for suspecting that the Company was Insolvent at that time or would become Insolvent as mentioned in section 476(b); and
  - (ii) a reasonable person in the person's circumstances would have had no such grounds for so suspecting; and
- (c) the person has provided valuable consideration under the transaction or has changed his, her or its position in reliance on the transaction.

*Creditor who gives up benefit of unfair preference may prove for preferred debt*

**482.**—(1) This section applies where at the request of the Company's liquidator, because of an order under section 480, or for any other reason, the creditor has put the Company in the same position as if the transaction had not been entered into.

(2) A court must not make under section 480, on an application relating to the transaction, an order prejudicing a right or interest of the creditor.

(3) The creditor may prove in the winding up as if the transaction had not been entered into.

*Floating Charge created within 6 months before Relation-Back Day*

**483.**—(1) This section applies if—

- (a) a Company is being wound up in Insolvency; and
- (b) the Company created a Floating Charge on Property of the Company at a particular time—
  - (i) during the 6 months ending on the Relation-Back Day; or
  - (ii) after that day but on or before the day when the winding up began.

(2) The Charge is void, as against the Company's liquidator, except so far as it secures—

- (a) an advance paid to the Company, or at its direction, at or after that time and as consideration for the Charge;
- (b) interest on such an advance;

- (c) the amount of a liability under a guarantee or other obligation undertaken at or after that time on behalf of, or for the benefit of, the Company;
- (d) an amount payable for Property or services supplied to the Company at or after that time; or
- (e) interest on an amount so payable.

(3) Subsection (2) does not apply if it is proved that the Company was Solvent immediately after that time.

(4) Subsection (2)(a) and (b) do not apply in relation to an advance so far as it was applied to discharge, directly or indirectly, an unsecured debt, whether contingent or otherwise, that the Company owed to—

- (a) the Chargee; or
- (b) if the Chargee was a Company – a Related Body Corporate of the Company.

(5) Subsection (2)(d) and (e) do not apply in relation to an amount payable as mentioned in subsection (2)(d) in so far as the amount exceeds the market value of the Property or services when supplied to the Company.

(6) If, during the 6 months ending on the Relation-Back Day, or after that day but on or before the day when the winding up began, a debt secured by the Charge was discharged, out of the Company's money or Property, to the extent of a particular amount (in this subsection called the "realised amount"), the liquidator may, by proceedings in a court of competent jurisdiction, recover from the Chargee, as a debt due to the Company, the amount worked out in accordance with the formula—

Unsecured Amount – Realisation Costs

where—

"realisation costs" means so much (if any) of the costs and expenses of enforcing the Charge as is attributable to realising the realised amount; and

"unsecured amount" means so much of the realised amount as does not exceed so much of the debt as would, if the debt had not been so discharged, have been unsecured, as against the liquidator, because of subsection (2).

#### *Division 5—Offences Antecedent to or in Course of Winding Up*

##### *Penalty for falsification of Books*

**484.** If any Officer or contributory of any Company being wound up destroys, mutilates, alters or falsifies any Financial Records, Books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any Books belonging to the Company, with intent to defraud or deceive any person, the person is liable on conviction to be punished by imprisonment for a period not exceeding the maximum imprisonment term prescribed for this section.

*Fraud by Officers of Companies which have gone into liquidation*

**485.** If any person, being, at the time of the commission of the alleged offence, an Officer of a Company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—

- (a) has, by false pretences or by means of any other fraud, 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;
- (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,

the person is liable on conviction to be punished by imprisonment for a period not exceeding the Maximum Imprisonment Term prescribed for this section.

*Officers of Company failing to account for loss of part of Company's Property*

**486.—**(1) If any person, being a past or present Officer of a Company which is being wound up under the provisions of this Act, on being required by the Official Receiver at any time, or in the course of his or her examination by the Court under section 567, to account for the loss of any substantial part of the Company's Property incurred within a period of a year next preceding the commencement of the winding up, fails to give a satisfactory explanation of the manner in which such loss occurred by a dishonest concealment of material facts, the person is liable on conviction to be punished by imprisonment for a period not exceeding the maximum imprisonment term prescribed for this section.

(2) In this section—

“dishonest” means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the person to be dishonest according to the standards of ordinary people.

*Liability where proper accounts not kept*

**487.—**(1) If, in the course of the winding up of a Company, it is shown that proper Books were not kept by the Company at any time during the period of 2 years immediately preceding the commencement of the winding up, or the period between the registration of the Company and the commencement of the winding up, whichever is the shorter, every Officer of the Company who is in default shall, unless the person shows that they acted honestly and that, in the circumstances in which the business of the Company was carried on, the default was excusable, the person is liable on conviction to be punished by imprisonment for a period not exceeding the maximum imprisonment term prescribed for this section.

(2) For the purpose of this section, a Company shall be deemed not to have kept proper Books, if it has not kept such Books as are required to be kept under this Act.

*Power of Court to assess damages against delinquent Directors, etc.*

**488.**—(1) If, in the course of winding up a Company, it appears that any person who has taken part in the formation or promotion of the Company, or any past or present Director, manager or liquidator, or any Officer of the Company, has misapplied or retained or become liable or accountable for any money or Property of the Company, or been guilty of a misfeasance or breach of trust in relation to the Company, the Court may, on the application of the Official Receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the Officer, and compel the person to repay or restore the money or Property or any part respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the Company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) Where an order for payment of money is made under this section, the order shall be deemed to be a final decree within the meaning of section 3(1)(g) of the Bankruptcy Act (Cap. 48).

*Prosecution of delinquent Officers and Members of Company*

**489.**—(1) If it appears to the Court, in the course of a winding up by, or subject to the supervision of, the Court, that any past or present Officer, or any Member, of the Company has been guilty of any offence in relation to the Company for which he or she is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present Officer, or any Member, of the Company has been guilty of any offence in relation to the Company for which he or she is criminally liable, the person must immediately report the matter to the Director of Public Prosecutions and must provide to the Director of Public Prosecutions such information and give to the Director of Public Prosecutions such access to and facilities for inspecting and taking copies of any document, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Public Prosecutions may require.

(3) Where any report is made under subsection (2) to the Director of Public Prosecutions, the Director of Public Prosecutions may, if the Director of Public Prosecutions thinks fit, refer the matter to the Official Receiver for further inquiry, and the Official Receiver must then investigate the matter and may, if the Official Receiver thinks it expedient, apply to the Court for an order conferring on the Official Receiver for the purpose, with respect to the Company concerned, all such powers of investigating the Affairs of the Company as are provided by this Act in the case of a winding up by the Court.

(4) If it appears to the Court, in the course of a voluntary winding up, that any past or present Officer, or any Member, of the Company has been guilty, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions under subsection (2), the Court may, on the application of any person interested in the winding up, or of its own motion, direct the liquidator to make such a report and, on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

*Division 6—Supplementary Provisions as to Winding Up*

*Distribution of Property of Company*

**490.** Subject to the provisions of this Act as to preferential payments, the assets of a Company must, on its winding up, be applied in satisfaction of its liabilities, *pari passu*, and, subject to such application, must be distributed among the Members according to their rights and interests in the Company unless the Company's Articles of Association otherwise provide.

*Powers and duties of liquidator in winding up*

**491.—**(1) The liquidator may—

- (a) in the case of a Members' Voluntary Winding Up, with the sanction of a Special Resolution of the Company, and, in the case of a Creditors' Voluntary Winding Up, with the sanction of the Court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers specified in section 543(1)(d), (e), or (f) to a liquidator in a winding up by the Court;
- (b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court, under this Act, of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls;
- (e) call General Meetings of the Company for the purpose of obtaining the sanction of the Company by Special Resolution or for any other purpose the liquidator may think fit.

(2) The liquidator shall pay the debts of the Company and must adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

*Power of Court to appoint and remove liquidator in winding up*

**492.**—(1) If, from any cause whatever, there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

*Notice by liquidator of appointment*

**493.** The liquidator must, within 14 days after the liquidator's appointment, publish in the *Gazette* and deliver to the Registrar, for registration, a notice of the liquidator's appointment in the Prescribed Form.

*Arrangement— when binding on creditors*

**494.**—(1) Any arrangement entered into between a Company about to be, or in the course of being, wound up and its creditors must, subject to the right of appeal under this section, be binding on the Company, if sanctioned by a Special Resolution, and on the creditors, if acceded to by 75 percent in number and value of the creditors.

(2) Any creditor or contributory may, within 30 days from the completion of the arrangement, appeal to the Court against it, and the Court may then, as it thinks just, amend, vary or confirm the arrangement.

*Power to apply to Court to have questions determined or powers exercised*

**495.**—(1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a Company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up must as soon as practicable be delivered by the Company, or otherwise as may be prescribed by regulations made under this Act, to the Registrar for registration.

*Costs of winding up*

**496.** All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, must be payable out of the assets of the Company in priority to all other claims.

*Saving for rights of creditors and contributories*

**497.** The voluntary winding up of a Company must not bar the right of any creditor or contributory to have it wound up by the Court but, in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

*Disqualification for appointment as liquidator*

**498.** A Company or Foreign Company must not be qualified for appointment as liquidator of a Company, whether in winding up by or under the supervision of the Court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

*Corrupt inducement affecting appointment as liquidator*

**499.** Any person who gives, or agrees or offers to give, to any Member or creditor of a Company any valuable consideration with a view to securing his or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the Company's liquidator shall be liable to pay a penalty not exceeding the maximum penalty prescribed for this section.

*Enforcement of duty of liquidator to make returns, etc.*

**500.**—(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which the liquidator is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on the liquidator of a notice requiring the liquidator to do so, the Court may, on an application made to the Court by any contributory or creditor of the Company, or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application must be borne by the liquidator, but shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

*Notification that a Company is in liquidation*

**501.**—(1) Where a Company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the Company or a liquidator of the Company, or a Receiver or Manager of the Property of the Company, being a document on or in which the name of the Company appears, must contain a statement that the Company, is in liquidation.

(2) If default is made in complying with this section, the Company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any Officer of the Company, any liquidator of the Company and any Receiver or Manager shall be liable to pay a penalty not exceeding the maximum penalty prescribed for this section.

*Exemption of certain documents from stamp duty on winding up of Companies*

**502.**—(1) In the case of a winding up by the Court, or of a Creditors' Voluntary Winding Up of a Company—

- (a) every assurance (including a deed, conveyance, grant, transfer, assignment and surrender) relating solely to freehold or leasehold Property or to any mortgage, Charge or other encumbrance on, or to any estate, right or



interest in, any real or personal Property, which forms part of the assets of the Company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the Company; and

- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, statutory declaration, bond or other instrument or writing relating solely to the Property of any Company which is being so wound up or to any proceeding under any such winding up,

shall be exempt from stamp duty.

*Books of Company to be evidence*

**503.** Where a Company is being wound up, all Books of the Company and of the liquidators shall, as between the contributories of the Company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

*Disposal of Books of Company*

**504.—**(1) When a Company has been wound up and is about to be Deregistered, the Books of the Company and of the liquidators may be disposed of as follows—

- (a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;
- (b) in the case of a Members' Voluntary Winding Up, in such way as the Company, by Special Resolution, directs; or
- (c) in the case of a Creditors' Voluntary Winding Up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the Company may direct.

(2) Subject to the other provisions of this section, after 3 years from the Deregistration of the Company, no responsibility shall rest on the Company, the liquidators, or any person to whom the custody of the Books of the Company has been committed, by reason of any Books of the Company not being forthcoming to any person claiming to be interested therein.

(3) Regulations may be made under this Act to prevent, for any period not exceeding 3 years from the Deregistration of the Company, the destruction of the Books of a Company which has been wound up, and for enabling any creditor or contributory of the Company to appeal from any direction so given.

*Information as to pending liquidations*

**505.** If, where a Company is being wound up, the winding up is not concluded within 1 year after its commencement, the liquidator must, at such intervals as may be prescribed by regulations made under this Act, until the winding up is concluded, deliver to the Registrar a statement in the Prescribed Form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.



*Unclaimed assets to be paid to Companies Liquidation Account*

**506.**—(1) If, where a Company is being wound up, it appears, either from any statement delivered to the Registrar under section 505 or otherwise, that a liquidator has in the liquidator's hands or under the liquidator's control any money representing unclaimed or undistributed assets of the Company which have remained unclaimed or undistributed for 6 months after the date of their receipt, or any money held by the Company in trust in respect of dividends or other sums due to any person as a Member of the Company, the liquidator must immediately pay the said money to the Official Receiver for the credit of the Companies Liquidation Account, and must be entitled to a receipt for the money so paid, and that receipt shall be an effectual discharge to the liquidator.

(2) For the purpose of ascertaining and getting in any money payable in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section 132 of the Bankruptcy Act (Cap. 48), for the purposes of ascertaining and getting in the sums, funds and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid in pursuance of this section may apply to the Official Receiver for payment and the Official Receiver may, on a certificate by the liquidator that the person claiming is entitled, pay to that person the sum due.

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of this section may appeal to the Court.

*Resolutions passed at adjourned meetings of creditors and contributories*

**507.** Where a resolution is passed at an adjourned meeting of any creditor or contributory of a Company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

*Division 7—Supplementary Powers of Court**Meetings to ascertain wishes of creditors or contributories*

**508.**—(1) The Court may, as to all matters relating to the winding up of a Company, have regard to the wishes of the creditors or contributories of the Company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairperson of any such meeting and to report the result to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the Articles of Association of the Company.

*Swearing of affidavits and declarations*

**509.**—(1) Any affidavit or declaration required to be sworn or made under the provisions, or for the purposes, of this Part may be sworn or made in Fiji before any court, judge or person lawfully authorised to take and receive affidavits or statutory declarations, or before a Fiji consular officer in any place outside Fiji.

(2) All courts and all persons acting judicially in Fiji shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul, vice-consul or pro-consul, attached, appended or subscribed to any such affidavit or declaration, or to any other document to be used for the purposes of this Part.

*Division 8—Companies Liquidation Account**Companies Liquidation Account*

**510.** An account, to be called the “Companies Liquidation Account”, shall be kept by the Official Receiver with a Financial Institution licensed under the Banking Act 1995, or such other Financial Institution as may be prescribed by regulations made under this Act, and all moneys received by the Official Receiver in respect of proceedings under this Act in connection with the winding up of Companies must be paid to that account.

*Investment of surplus funds and Companies Contingency Fund*

**511.**—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account during the period of liquidation, is in excess of the amount, which, in the opinion of the Official Receiver, is required for the time being to answer demands in respect of Companies’ estates, the Official Receiver may invest the amount not so required, or any part, in any investment authorised by law for the investment of trust funds or may place the same, or any part, on fixed deposit with a Financial Institution licensed under the Banking Act 1995, or such other Financial Institution as may be prescribed by regulations made under this Act.

(2) Whenever any part of the money so invested or placed on deposit is, in the opinion of the Official Receiver, required to answer any demand in respect of Companies’ estates, the Official Receiver shall raise such sums as may be required by the sale of such part of the said securities or by withdrawing such amount from deposit as may be necessary and shall repay such sums to the Companies Liquidation Account.

(3) The dividends and interest accruing from any money so invested or placed on deposit shall be paid by the Official Receiver to the credit of a separate account, to be called the “Companies Contingency Fund” to be kept by the Official Receiver at a Financial Institution licensed under the Banking Act 1995, or such other Financial Institution as may be prescribed by regulations made under this Act.

(4) Where it appears that it is in the public interest so to do, and that other funds are not available or properly chargeable, the Court may, on the application of the Registrar or of the Official Receiver, authorise the Registrar or the Official Receiver to use money from the Companies Contingency Fund to meet expenditure which the Court considers to be necessary or advisable to incur for the purpose of enabling the Registrar or the Official Receiver, as the case may be, to carry out more efficiently the provisions of, and their

duties under, this Act, and, without prejudice to the generality of the foregoing, for the purpose of enabling the Registrar to meet any indemnity or to pay any expenses which the Registrar is required, by this Act, to meet or to pay.

(5) Where an application is made by the Registrar under subsection (4), the Court shall consult the Official Receiver before granting the application and, if the application is granted, then the Official Receiver must pay to the Registrar, out of the Companies Contingency Fund, the amount authorised by the Court.

## PART 39—WINDING UP BY THE COURT

### *Division 1—Jurisdiction*

#### *Jurisdiction to wind up Companies registered in Fiji*

**512.** The Court must have jurisdiction to wind up any Company or Foreign Company registered in Fiji.

### *Division 2—Cases in which a Company may be Wound by Court*

#### *Circumstances in which Company may be wound up by the Court*

**513.** A Company (which where applicable in this Part includes a Foreign Company) may be wound up by the Court, if—

- (a) the Company has, by Special Resolution, resolved that the Company be wound up by the Court;
- (b) the Company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- (c) the Company is Insolvent;
- (d) the Court is of opinion that it is just and equitable that the Company should be wound up;
- (e) in the case of a Foreign Company and Carrying on Business in Fiji, winding up proceedings have been commenced in respect of it in the country or territory of its incorporation or in any other country or territory in which it has established a place of business.

#### *Solvency and Insolvency*

**514.—(1)** A Company or Foreign Company is Solvent if, and only if, it is able to pay all its debts, as and when they become due and payable.

(2) A Company or Foreign Company which is not Solvent is Insolvent.

#### *Definition of inability to pay debts*

**515.** Unless the contrary can be proven to the satisfaction of the Court, a Company must be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding \$10,000 or such other Prescribed Amount then due, has served on the Company, by leaving it at the Registered Office

of the Company, a demand requiring the Company to pay the sum so due (“Statutory Demand”) and the Company has, not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice; or

- (b) if after 3 months ending on the day on which the winding up application is made—
  - (i) execution or other process issued on a judgment, Act or order of any Court in favour of a creditor of the Company is returned unsatisfied in whole or in part;
  - (ii) a Receiver or Manager has been appointed, of Property of the Company was appointed under a power contained in an instrument relating to a Floating Charge on such Property; or
  - (iii) 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 must take into account the contingent and prospective liabilities of the Company.

*Division 3—Application to Set Aside a Statutory Demand*

*Company may apply*

**516.**—(1) A Company may apply to the Court for an order setting aside a Statutory Demand served on the Company.

(2) An application may only be made within 21 days after the demand is so served.

(3) An application is made in accordance with this section only if, within those 21 days—

- (a) an affidavit supporting the application is filed with the Court; and
- (b) a copy of the application, and a copy of the supporting affidavit, are served on the person who served the demand on the Company.

*Determination of application where there is a dispute or offsetting claim*

**517.**—(1) This section applies where, on an application to set aside a Statutory Demand, the Court is satisfied of either or both of the following—

- (a) that there is a genuine dispute between the Company and the respondent about the existence or amount of a debt to which the demand relates;
- (b) that the Company has an offsetting claim.

(2) The Court must calculate the substantiated amount of the demand.

(3) If the substantiated amount is less than the statutory minimum amount for a Statutory Demand, the Court must, by order, set aside the demand.

(4) If the substantiated amount is at least as great as the statutory minimum amount for a Statutory Demand, the Court may make an order—

- (a) varying the demand as specified in the order; and
- (b) declaring the demand to have had effect, as so varied, as from when the demand was served on the Company.

(5) The Court may also order that a demand be set aside if it is satisfied that—

- (a) because of a defect in the demand, substantial injustice will be caused unless the demand is set aside; or
- (b) there is some other reason why the demand should be set aside.

*Effect of order setting aside Statutory Demand*

**518.** A Statutory Demand has no effect while there is in force an order setting aside the demand.

*Dismissal of application*

**519.** Unless the Court makes, on an application to set aside a Statutory Demand, an order setting aside the Statutory Demand, the Court is to dismiss the application.

*Order subject to conditions*

**520.** An order setting aside a Statutory Demand may be made subject to such conditions as the Court considers fit.

*Costs where Company successful*

**521.** Where, on an application to set aside a Statutory Demand, the Court sets aside the demand, it may order the person who served the demand to pay the Company's costs in relation to the application.

*Division 4—Applications for Winding Up*

*Provisions as to applications for winding up*

**522.—**(1) An application to the Court for the winding up of a Company must be by application presented, subject to the provisions of this section, either by the Company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately provided that—

- (a) the contributory holds Shares which were either originally allotted to the contributory or have been held by the contributory, and registered in the contributory's name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved to the contributory through the death of a former holder; (b) the Court must not give a hearing to a winding up application presented by a contingent or prospective creditor, until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court; and

- (c) an application for the winding up of a Foreign Company under section 513(d), may be presented by the Official Receiver, as well as by any other person authorised to do so under the provisions of this subsection, but the Court must not make a winding up order on an application presented by the Official Receiver, unless it is satisfied that the liquidator or provisional liquidator of the Foreign Company in the country or territory where winding up proceedings have been commenced in respect of it has, in the manner prescribed by regulations made under this Act, required the Official Receiver to present the application.

(2) Where a Company is being wound up voluntarily or subject to supervision, a winding up application may be presented by the Official Receiver, as well as by any other person authorised in that behalf under the other provisions of this section, but the Court must not make a winding up order on the application, unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

*Power of Court on hearing application*

**523.**—(1) On hearing a winding up application, the Court may—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim order, or any other order that it thinks fit,

but the Court must not refuse to make a winding up order on the ground only that the assets of the Company have been mortgaged to an amount equal to or in excess of those assets or that the Company has no assets.

(2) Where the application is presented by Members of the Company as contributories on the ground that it is just and equitable that the Company should be wound up, the Court, if it is of the opinion—

- (a) that the applicants are entitled to relief, either by winding up the Company or by some other means; and
- (b) that, in the absence of any other remedy, it would be just and equitable that the Company should be wound up,

must make a winding up order, unless it is also of the opinion both that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the Company wound up instead of pursuing that other remedy.

*Power to stay or restrain proceedings against Company*

**524.**—(1) At any time after the making of a winding up application, and before a winding up order has been made, the Company, or any creditor or contributory, may—

- (a) where any suit or proceeding against the Company is pending in the Court or the Court of Appeal, apply to the Court in which the suit or proceeding is pending for a stay of proceedings; and

- (b) where any other suit or proceeding is pending against the Company, apply to the Court having jurisdiction to wind up the Company to restrain further proceedings in the suit or proceeding,

and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

*Avoidance of dispositions of Property, etc. after commencement of winding up*

**525.** In a winding up by the Court, any disposition of the Property of the Company, including things in action, and any transfer of Shares, or alteration in the status of the Members of the Company, made after the commencement of the appointment of a liquidator, must, unless the Court otherwise orders, be void.

*Avoidance of attachments, etc.*

**526.** Where any Company is being wound up by the Court, any attachment, distress or execution put in force against the estate or effects of the Company after the appointment of a liquidator must be void.

*Commencement of winding up by the Court*

**527.—**(1) Where, before the making of a winding up application, a resolution has been passed by the Company for voluntary winding up, the winding up of the Company must be deemed to have commenced at the time of the passing of the resolution and, unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up must be deemed to have been validly taken.

(2) In any other case, the winding up of a Company by the Court must be deemed to commence at the date the winding up order is made.

*Period within which application must be determined*

**528.—**(1) An application for a Company to be wound up in Insolvency is to be determined within 6 months after it is made.

(2) The Court may by order (on such conditions as it considers fit) extend the period within which an application must be determined, but only if—

- (a) the Court is satisfied that special circumstances justify the extension; and
- (b) the order is made within that period as prescribed by subsection (1), or as last extended under this subsection, as the case requires.

(3) An application is, because of this subsection, dismissed if it is not determined as required by this section.

*Company may not oppose application on certain grounds*

**529.—**(1) In so far as an application for a Company to be wound up in Insolvency relies on a failure by the Company to comply with a Statutory Demand, the Company may not, without the leave of the Court, oppose the application on a ground—

- (a) that the Company relied on for the purposes of an application by it for the demand to be set aside; or



(b) that the Company could have so relied on, but did not so rely on (whether it made such an application or not).

(2) The Court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the Company is Solvent.

#### *Division 5—Consequences of Winding Up Order*

##### *Copy of order to be forwarded to the Registrar*

**530.** On the making of a winding up order, the Company must Lodge a copy of the order with the Registrar, using the Prescribed Form, for registration.

##### *Actions stayed on winding up order*

**531.** When a winding up order has been made or an interim liquidator has been appointed under section 537, no action or proceeding must be proceeded with or commenced against the Company, except by leave of the Court and subject to such terms as the Court may impose.

##### *Effect of winding up order*

**532.** An order for winding up a Company must operate in favour of all the creditors and of all the contributories of the Company as if made on the joint application of a creditor and of a contributory.

#### *Division 6—Official Receiver in Winding Up*

##### *Appointment of Official Receiver by Court in certain cases*

**533.** If, in the case of the winding up of any Company by the Court, it appears to the Court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the Official Receiver should be the Official Receiver for purposes of that winding up, the Court may appoint that other officer to act as Official Receiver in that winding up, and the person so appointed must be deemed to be the Official Receiver in that winding up for all the purposes of this Act.

##### *Statement of Company's Affairs to be submitted to Official Receiver*

**534.** When the Court has made a winding up order or appointed an interim liquidator under section 537, there must, unless the Court think fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the Affairs of the Company in the Prescribed Form verified by affidavit showing—

- (a) the particulars of its assets, debts and liabilities;
- (b) the names, postal addresses and occupations of its creditors;
- (c) the securities held by the creditors respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed by regulations made under this Act or as the Official Receiver may require.



(2) The statement must be submitted and verified by one or more of the persons who are, at the relevant date, the Directors of the Company and by a person who is, at that date, a secretary of the Company, or by such of the following persons in this subsection mentioned as the Official Receiver, subject to the direction of the Court, may be required to submit and verify the statement—

- (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 date of the interim liquidator's appointment;
- (c) who are in the employment of the Company, or have been in the employment of the Company within 1 year before date of the interim liquidator's appointment, and are, in the opinion of the Official Receiver, capable of giving the information required;
- (d) who are or have been, within 1 year before date of the interim liquidator's appointment, Officers of or in the employment of a Company which is, or within 1 year before date of the interim liquidator's appointment was, an Officer of the Company to which the statement relates;
- (e) who are, at the date of the interim liquidator's appointment, the Receivers or Managers of the whole or substantially the whole of the Company's Property.

(3) The statement must be submitted within 14 days from the date of the interim liquidator's appointment or within such extended time as the Official Receiver or the Court may, for special reasons, appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section may be allowed and, if so allowed, must be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the Company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(5) Any person stating, in writing, to be a creditor or contributory of the Company must be entitled to inspect the statement and obtain a copy of the statement at all reasonable times on payment of a fee for the Prescribed Amount.

*Report by Official Receiver*

**535.**—(1) In a case where a winding up order is made, the Official Receiver must, as soon as practicable after receipt of the statement to be submitted under section 534, or, in a case where the Court orders that no statement must be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities;

- (b) if the Company has failed, as to the causes of the failure; and
- (c) whether, in his or her opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the Company or the conduct of the business of the Company.

(2) The Official Receiver may also, if he or she thinks fit, make a further report, or further reports, stating the manner in which the Company was formed and whether, in his or her opinion, any fraud has been committed by any person in its promotion or formation or by any Officer of the Company in relation to the Company since the formation of the Company, and any other matter which, in his or her opinion, it is desirable to bring to the notice of the Court.

(3) If the Official Receiver states in any such further report as aforesaid that, in his or her opinion, a fraud has been committed, the Court must have the further powers provided in section 567.

#### *Division 7—Appointment of Liquidators by the Court*

##### *Power of Court to appoint liquidators*

**536.** For the purpose of conducting the proceedings in winding up a Company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

##### *Appointment and powers of interim liquidator*

**537.**—(1) The Court may appoint the Official Receiver to be the liquidator provisionally at any time after the presentation of a winding up application and before the making of a winding up order.

(2) Where a liquidator is appointed by the Court, the Court may limit and restrict his or her powers by the order appointing the liquidator.

##### *Appointment, style, etc., of liquidators*

**538.** The following provisions with respect to liquidators must have effect on a winding up order being made—

- (a) the Official Receiver must, by virtue of his or her office, become the provisional liquidator and must continue to act as such, until he or she, or another person becomes liquidator and is capable of acting as such;
- (b) the Official Receiver must summon separate meetings of the creditors and contributories of the Company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver, provided that, where the Court has dispensed with the settlement of a list of contributories, it must not be necessary for the Official Receiver to summon a meeting of contributories;
- (c) the Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the

determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court must decide the difference and make such order thereon as the Court may think fit;

- (d) in a case where a liquidator is not appointed by the Court, the Official Receiver must be the liquidator of the Company;
- (e) the Official Receiver must, by virtue of his or her office, be the liquidator during any vacancy;
- (f) a liquidator must be described, where a person other than the Official Receiver is liquidator, as “the liquidator”, and, where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”, of the particular Company in respect of which he or she is appointed and not by his or her individual name.

*Provisions where person other than Official Receiver is appointed liquidator*

**539.** Where, in the winding up of a Company by the Court, a person other than the Official Receiver is appointed liquidator, that person must—

- (a) not be capable of acting as liquidator, until he or she has notified his or her appointment to the Registrar and given security, in the Prescribed Form, to the satisfaction of the Official Receiver;
- (b) give the Official Receiver such information and such access to and facilities for inspecting the Books and documents of the Company and generally such aid as may be requisite for enabling that officer to perform his or her duties under this Act.

*General provisions as to liquidators*

**540.—**(1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) Where a person other than the Official Receiver is appointed liquidator or interim liquidator, the person must receive such salary or remuneration by way of percentage or otherwise as—

- (a) is agreed between the liquidator and the committee of inspection;
- (b) if there is no committee of inspection or the liquidator and the committee of inspection fail to agree, by a resolution of the majority of creditors;
- (c) or otherwise as the Court directs.

(3) A vacancy in the office of a liquidator appointed by the Court must be filled by the Court.

(4) If more than one liquidator is appointed by the Court, the Court must declare whether any act, by this Act required or authorised to be done by the liquidator, is to be done by all or any one or more of the persons appointed.

(5) Subject to section 490, the acts of a liquidator must be valid, notwithstanding any defect that may afterwards be discovered in, his or her appointment or qualification.

*Custody of Company's Property*

**541.** Where a winding up order has been made or where an interim liquidator has been appointed, the liquidator or the interim liquidator, as the case may be, must take into that person's custody or under his or her control all the Property and things in action to which the Company is or appears to be entitled.

*Vesting of Property of Company in liquidator*

**542.** Where a Company is being wound up by the Court, the Court may, on the application of the liquidator, by order, direct that all or any part of the Property of whatsoever description belonging to the Company or held by trustees on its behalf must vest in the liquidator by his or her official name, and thereupon the Property to which the order relates must vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend, in his or her official name, any action or other legal proceeding which relates to that Property or which it is necessary to bring or defend for the purpose of effectually winding up the Company and recovering its Property.

*Powers of liquidator*

**543.—(1)** Subject to this section, the liquidator in a winding up by the Court must have power, with the sanction either of the Court or of the committee of inspection—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the Company;
- (b) to carry on the business of the Company, so far as may be necessary for the beneficial winding up of the Company;
- (c) to appoint a barrister and solicitor to assist the liquidator in the performance of his or her duties;
- (d) to pay any class of creditors in full;
- (e) to 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;
- (f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and contributory or alleged 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 may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge.

(2) Subject to this section, the liquidator in a winding up by the Court must have power—

- (a) to sell the real and personal Property and things in action of the Company by public auction or private contract, with power to transfer the whole Property to any person or Company or to sell the same in parcels;
- (b) to do all acts and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents;
- (c) to prove, rank and claim in the bankruptcy, Insolvency or sequestration of any contributory for any balance against his or her estate, and to receive dividends in the bankruptcy, Insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or Insolvent, and rateably with the other separate creditors;
- (d) to 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;
- (e) to raise, on the security of the assets of the Company, any money requisite;
- (f) to take out, in his or her official name, letters of administration for any deceased contributory, and to do, in his or her official name, any other act necessary for obtaining payment of any money due from a contributory or his or her estate which cannot be conveniently done in the name of the Company and, in all such cases, the money due must, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator, provided that nothing in this paragraph must be deemed to affect the rights, duties and privileges of the Public Trustee;
- (g) to appoint an agent to do any business which the liquidator is unable to do;
- (h) to do all such other things as may be necessary for winding up the Affairs of the Company and distributing its assets.

(3) The exercise by a liquidator in a winding up by the Court of the powers conferred by this section must be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(4) Except with the approval of the Court, the committee of inspection or a resolution of the majority of creditors, a liquidator must not enter into an agreement on the Company's behalf (for example, but without limitation, a lease or a Charge) if—

- (a) without limiting paragraph (b), the term of the agreement may end; or

- (b) obligations of a party to the agreement may, according to the terms of the agreement, be discharged by performance;
- (c) more than 3 months after the agreement is entered into, even if the term may end, or the obligations may be discharged, within those 3 months.

*Exercise and control of liquidator's powers*

**544.**—(1) Subject to the provisions of this Act, the liquidator of a Company which is being wound up by the Court must, in the administration of the assets of the Company and in the distribution of the assets among its creditors, have regard to any directions that may be given by resolution of the majority of creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting must, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it must be the liquidator's duty to summon meetings at such times as the creditors or contributories, by majority resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court, in a manner prescribed by regulations made under this Act, for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator must manage the estate and its distribution among the creditors at the liquidator's discretion.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

*Books to be kept by liquidator*

**545.** Every liquidator of a Company which is being wound up by the Court must keep, in a manner prescribed by regulations made under this Act, proper Books, in which he or she must cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed by regulations made under this Act, and any creditor or contributory may, subject to the control of the Court, personally or by his or her agent inspect any such Books.

*Payments by liquidator to Official Receiver or into Financial Institution*

**546.**—(1) Subject to subsection (2), every liquidator of a Company which is being wound up by the Court must, in such manner and at such times as the Official Receiver must direct, pay the money received by the liquidator to the Official Receiver for the credit of the Companies Liquidation Account, and the Official Receiver must furnish the liquidator with a receipt for the money.

(2) If the committee of inspection satisfies the Court that, for the purpose of carrying on the business of the Company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any Financial Institution, the Court must, on the application of the committee of inspection, authorise the liquidator to make payments into and out of such Financial Institution as the committee may select.

(3) If any such liquidator at any time retains for more than 10 days a sum exceeding \$1,000, or such other amount as the Court in any particular case authorises him or her to retain, then, unless the liquidator explains the retention to the satisfaction of the Court, the liquidator must pay interest on the amount so retained in excess at the rate of 20 percent per annum or such other rate prescribed by regulations made under this Act and must be liable to disallowance of all or such part of his or her remuneration as the Court may think just, and to be removed from the liquidator's office by the Court, and must be liable to pay any expense occasioned by reason of his or her default.

(4) A liquidator of a Company which is being wound up by the Court must not pay any sum received by him or her as liquidator into his or her private banking account.

*Audit of liquidator's accounts*

**547.**—(1) Every liquidator, other than the Official Receiver, of a Company which is being wound up by the Court must within 28 days, or such longer period as the Official Receiver may allow, after the expiration of the period of 6 months from the date of his or her appointment and of every subsequent period of 6 months, send to the Official Receiver, or as the Official Receiver directs, an account of his or her receipts and payments as liquidator.

(2) The account must be in the Prescribed Form, must be made in duplicate and must be verified by a statutory declaration in the Prescribed Form.

(3) The Official Receiver must cause the account to be audited, and, for the purpose of the audit, the liquidator must furnish the Official Receiver with such information as the Official Receiver may require, and the Official Receiver may, at any time, require the production of and inspect any Books kept by the liquidator.

(4) When the Books have been audited, one copy of the Books must be Lodged with the Registrar by the Official Receiver and one copy must be delivered to the Court for filing, and must be open to the inspection of any person on payment of the Prescribed Amount.

(5) The liquidator must cause a copy of the account, when audited, or a summary account, to be sent by post to each creditor and contributory within 30 days of the completion of the Audit, provided that the Official Receiver may, in any case, dispense with compliance with this subsection.

*Control over liquidators*

**548.**—(1) The Official Receiver must supervise the conduct of liquidators at all times.



(2) The Official Receiver may, at any time, require any liquidator of a Company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he or she is engaged, and may, if the Official Receiver thinks fit, apply to the Court to examine him or her or any other person on oath concerning the winding up.

*Release of liquidators*

**549.**—(1) When the liquidator of a Company which is being wound up by the Court has realised all the Property of the Company, or so much of the Property as can, in the liquidator's opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his or her office, the Court must, on the liquidator's application, cause a report on his or her accounts to be prepared, and, on the liquidator complying with all the requirements of the Court, must take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and must either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which the liquidator may have done or made contrary to the liquidator's duty.

(3) An order of the Court releasing the liquidator must discharge him or her from all liability in respect of any act done or default by liquidator in the administration of the Affairs of the Company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Whether the liquidator has not previously resigned or been removed, the release must operate as a removal from office.

*Division 8—Committees of Inspection*

*Meetings of creditors and contributories to determine whether  
committee of inspection must be appointed*

**550.**—(1) When a winding up order has been made by the Court, it must be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of these matters, the Court must decide the difference and make such order thereon as the Court may think fit.



*Constitution and proceedings of committee of inspection*

**551.**—(1) A committee of inspection appointed in accordance with this Act must consist of creditors and contributories of the Company, or persons holding general powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

(2) The committee must meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he or she thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but must not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by the member and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his or her creditors or is absent from five consecutive meetings of the committee without the leave of those members who, together with the member, represent the creditors or contributories, as the case may be, the member's office must become immediately vacant.

(6) A member of the committee may be removed by a majority resolution at a meeting of creditors, if the member represents creditors, or a majority resolution at a meeting of contributories, if the Member represents contributories, of which 21 days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator must immediately summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy, provided that, if the liquidator, is of the opinion that it is unnecessary for the vacancy to be filled, the liquidator may apply to the Court and the Court may make an order that the vacancy must not be filled, on such conditions as it sees fit.

(8) The continuing members of the committee, if not fewer than two, may act, notwithstanding any vacancy in the committee.

*Powers of Court where no committee of inspection*

**552.** Where, in the case of a winding up, there is no committee of inspection, the Court may, on the application of the liquidator, do any act or thing or give any direction or permission which is, by this Act, authorised or required to be done or given by the committee, provided that, where the Official Receiver is the liquidator, the Official Receiver may do any such act or thing and give any such direction or permission without application to the Court.

*Division 9—General Powers of Court in case of Winding up by Court**Power to stay winding up*

**553.**—(1) The Court may, at any time after an order for winding up, on the application either of the liquidator or the Official Receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section, the Court may, before making an order, require the Official Receiver to furnish to the Court a report with respect to any fact or matter which are in his or her opinion relevant to the application.

(3) A copy of every order made under this section must be forwarded by the Company, or otherwise as may be prescribed by regulations made under this Act, to the Registrar, using the Prescribed Form, for registration.

*Settlement of list of contributories and application of assets*

**554.**—(1) As soon as possible after making a winding up order, the Court must settle a list of contributories, with power to rectify the register of Members in all cases where rectification is required in pursuance of this Act, and must cause the assets of the Company to be collected, and applied in discharge of its liabilities.

(2) Where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court must distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

*Delivery of Property to liquidator*

**555.** The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories and any trustee, Receiver or Manager, Financial Institution, agent or Officer of the Company to pay, deliver, convey, surrender or transfer, or within such time as the Court directs, to the liquidator any money, Property or Books in the Officer's possession to which the Company is *prima facie* entitled.

*Payment of debts due by contributory to Company and extent to which set-off allowed*

**556.**—(1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from a contributory or from the estate of the person whom the contributory represents to the Company, exclusive of any money payable by the contributory or the estate by virtue of any call in pursuance of this Act.

(2) In the case of any Company, when all the creditors are paid in full, any money due on any account whatever to a contributory from the Company may be allowed to the contributor by way of set-off against any subsequent call.

*Power of Court to make calls*

**557.**—(1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any call so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

*Payment into Financial Institution of moneys due to Company*

**558.**—(1) The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the amount due into a specified Financial Institution or any branch of the Financial Institution to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a specified Financial Institution or any branch of the Financial Institution in the event of a winding up by the Court must be subject in all respects to the orders of the Court.

*Order on contributory conclusive evidence*

**559.**—(1) An order made by the Court on a contributory must, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order must be taken to be truly stated as against all persons and in all proceedings whatsoever.

*Appointment of special manager*

**560.**—(1) Where the Official Receiver becomes the liquidator of a Company, whether provisionally or otherwise, the Official Receiver may, if satisfied that the nature of the estate or business of the Company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the Company other than the Official Receiver, apply to the Court.

(2) On application to the Court, the Court may appoint a special manager of the estate or business of the Company to act during such time as the Court may direct, with such powers, including any of the powers of a Receiver or Manager, as may be entrusted to the special manager by the Courts.

(3) The special manager must give such security and account in such manner as the Official Receiver must direct and will receive such remuneration as may be fixed by the Court.

*Power to exclude creditors not proving in time*

**561.** The Court may fix, a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

*Adjustment of rights of contributories*

**562.** The Court must adjust the rights of the contributories among themselves and make an order for the distribution of any surplus among the persons entitled thereto.

*Inspection of Books by creditors and contributories*

**563.**—(1) The Court may, at any time after making a winding up order, make such order for inspection of the Books of the Company by creditors and contributories as the Court thinks just, and any Books of the Company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section must be taken as excluding or restricting any statutory rights of any department of the Government or of any officer of the Government or of any person acting under the authority of any such department or officer.

*Power to order costs of winding up to be paid out of assets*

**564.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

*Power to summon persons suspected of having Property of the Company, etc.*

**565.**—(1) The Court may, at any time after the appointment of an interim liquidator or the making of a winding up order, summon before it any Officer of the Company or person known or suspected to have in the person's possession any Property of the Company or supposed to be indebted to the Company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, Affairs or Property of the Company.

(2) The Court may examine the person on oath concerning the matters, either by word of mouth or on written interrogatories, and may reduce the Officer's answers to writing and require the person to sign them provided the written answers accurately reflect the answers provided by word of mouth or on written interrogatories.

(3) An Officer cannot refuse to answer a question on examination on the basis that the answer may incriminate the person, however, if before the Officer answers a question on examination, the person states that the answer may incriminate the Officer, the answer is not admissible in evidence against person in a criminal proceeding.

(4) The Court may require the person to produce any Books in the Officer's custody or power relating to the Company, but, where the person claims any lien on Books produced by the person, the production must be without prejudice to that lien, and the Court must have jurisdiction, in the winding up, to determine all questions relating to that lien.

(5) If any person so summoned, after being tendered a reasonable sum for the person's expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause the person to be arrested and brought before the Court for examination.

*Attendance of Officers of Company at meetings of creditors, etc.*

**566.** In the winding up by the Court of a Company, the Court must have power to require the attendance of any Officer of the Company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, Affairs or Property of the Company.

*Power to order public examination of promoters and Officers*

**567.**—(1) Where an order has been made for winding up a Company by the Court, and the Official Receiver has made a further report under this Act stating that, in the Official Receiver's opinion, a fraud has been committed by any person in the promotion or formation of the Company or by any Officer of the Company in relation to the Company since its formation, the Court may, after consideration of the report, direct that that person or Officer must attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion, formation or the conduct of the business of the Company or as to the Officer's conduct and dealings.

(2) The Official Receiver must take part in the examination, and, for that purpose, may, if specially authorised by the Court in that behalf employ a barrister and solicitor.

(3) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory may also take part in the examination, either personally or through a barrister and solicitor.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined must be examined on oath and must answer all such questions as the Court may put or allow to be put to the person.

(6) A person cannot refuse to answer a question on examination on the basis that the answer may incriminate the person, however, if before the person answers a question on examination and the person states that the answer may incriminate the person, the answer is not admissible in evidence against person in a criminal proceeding.

(7) A person ordered to be examined under this section must, at the person's own cost, before the examination, be furnished with a copy of the Official Receiver's report, and may, at the person's own cost, employ a barrister and solicitor, who must be at liberty to put to the person such questions as the Court may deem just for the purpose of enabling the person to explain or qualify any answers given by the person, provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against the person, it must be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant and, if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as, in its discretion, it may think fit.

(8) Notes of the examination must be taken down, in writing, and must be read over to or by, and signed by, the person examined, and may then be used in evidence against the person, and must be open to the inspection of any creditor or contributory at all reasonable times.

(9) The Court may, if it thinks fit, adjourn the examination from time to time.

*Power to arrest absconding promoters, Officers and contributories*

**568.** The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that any person or Officer of the Company mentioned in section 567 or a contributory is about to leave Fiji or otherwise to abscond or to remove or conceal any of his or her Property for the purpose of evading payment to calls or of avoiding examination respecting the Affairs of the Company, may cause the person to be arrested and the person's Books and movable personal Property to be seized and for the Books and movable personal Property to be safely kept until such times as the Court may order.

*Powers of Court cumulative*

**569.** Any powers by this Act conferred on the Court must be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the Company or the estate of any contributory or debtor, for the recovery of any call or other sums.

*Delegation to liquidator of certain powers of Court*

**570.** Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and 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;
- (e) the fixing of a time within which debts and claims must be proved, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court,

provided that the liquidator must not, without the special leave of the Court, rectify the register of Members, and must not make any call without either the special leave of the Court or the sanction of the committee of inspection.

*Deregistration of Company*

**571.**—(1) When the Affairs of a Company have been completely wound up, the Court, if the liquidator makes an application in that behalf, must make an order that the Company be Deregistered from the date of the order, and the Company must be deregistered in accordance with Part 41.

(2) A copy of the order must, within 14 days from the date of the order, be delivered by the liquidator to the Registrar, using the Prescribed Form, for registration.

*Appeals*

**572.** Subject to this Act, an appeal must lie to the Court of Appeal from any decision or order given or made by the Court in the exercise of the jurisdiction conferred upon it by this Part.

## PART 40—VOLUNTARY WINDING UP

*Division 1—Commencement of Voluntary Winding Up**Circumstances in which Company may be wound up voluntarily*

**573.**—(1) A Company may be wound up voluntarily—

- (a) if the Company resolves, by Special Resolution, that the Company be wound up voluntarily;
- (b) the Company resolves, by Special Resolution, to the effect that it cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up.

(2) In this Part, “a resolution for voluntary winding up” means a resolution passed under any of the provisions of subsection (1).

*Notice of resolution to wind up voluntarily*

**574.** When a Company has passed a resolution for voluntary winding up, it must, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*, in a newspaper published and circulating in Fiji and by lodging a notice in the Prescribed Form with the Registrar.

*Commencement of voluntary winding up*

**575.** A voluntary winding up must be deemed to commence at the time of the passing of the resolution for voluntary winding up.

*Division 2—Consequences of Voluntary Winding Up**Effect of voluntary winding up on business and status of Company*

**576.** In case of a voluntary winding up, the Company must, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up of the Company.



*Avoidance of transfers, etc., after commencement of voluntary winding up*

**577.** Any transfer of Shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the Members of the Company, made after the commencement of a voluntary winding up, must be void.

*Division 3—Declaration of Solvency**Statutory declaration of Solvency in case of proposal to wind up voluntarily*

**578.**—(1) Where it is proposed to wind up a Company voluntarily, the Directors of the Company or, in the case of a Company having more than two Directors, the majority of the Directors, may, at a meeting of the Directors, make a declaration in the Prescribed Form to the effect that they have made a full inquiry into the Affairs of the Company, and that, having so done, they have formed the opinion that the Company will be able to pay its debts in full within such period, not exceeding 12 months, from the commencement of the winding up as may be specified in the declaration.

(2) A declaration must have no effect for the purposes of this Act unless—

- (a) it is made within the 30 days immediately preceding the date of the passing of the resolution for winding up the Company and is Lodged with the Registrar, for registration, before that date; and
- (b) it embodies a statement of the Company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) A winding up in the case of which a declaration has been made and Lodged with the Registrar in accordance with this section is referred to as a “Members’ Voluntary Winding Up”, and a winding up in the case of which a declaration has not been made and Lodged with the Registrar is referred to as a “Creditors’ Voluntary Winding Up”.

*Division 4—Members’ Voluntary Winding Up**Provisions applicable to a Members’ winding up*

**579.** The provisions of this Division must, subject to section 586, apply in relation to a Members’ Voluntary Winding Up.

*Power of Company to appoint and fix remuneration of liquidators*

**580.**—(1) The Company in General Meeting must appoint one or more liquidators for the purpose of winding up the Affairs and distributing the assets of the Company, and may fix the remuneration to be paid to the liquidator(s).

(2) On the appointment of a liquidator, all the powers of the Directors must cease, except so far as the Company in General Meeting or the liquidator sanctions the continuance of the Directors’ powers.

*Power to fill vacancy in office of liquidator*

**581.**—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the Company, the Company in General Meeting may, subject to any arrangement with its creditors, fill the vacancy.



(2) For that purpose, a General Meeting may be convened by any contributory or, if there were more liquidators than one, by any continuing liquidator.

(3) The General Meeting must be held in manner provided by this Act or by the Articles of Association of the Company, or in such manner as may, on application by any contributory or, by any continuing liquidator, be determined by the Court.

*Power of liquidator to accept Shares, etc., as consideration for sale of Property of Company*

**582.**—(1) Where a Company is proposed to be, or is in course of being, wound up voluntarily, and the whole or part of its business or Property is proposed to be transferred or sold to another Company, whether a Company within the meaning of this Act or not (in this section called the “transferee company”), the liquidator of the first-mentioned Company (in this section called the “transferor company”) may, with the sanction of a Special Resolution of that Company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement—

- (a) receive, in compensation or part compensation for the transfer or sale, Shares, policies or other like interests in the transferee company for distribution among the Members of the transferor company; or
- (b) may enter into any other arrangement whereby the Members of the transferor company may, in lieu of receiving cash, Shares, policies or other like interests, or in addition, participate in the profits of or receive any other benefits from the transferee company.

(2) Any sale or arrangement in pursuance of this section must be binding on the Members of the transferor company.

(3) If any Member of the transferor company who did not vote in favour of the Special Resolution expresses dissent in writing addressed to the liquidator, and left at the Registered Office of the Company within 7 days after the passing of the resolution, the Member may require the liquidator either to abstain from carrying the resolution into effect or to purchase the Member’s interest at a price to be determined by agreement or by arbitration in accordance with the law relating to arbitration for the time being in force in Fiji.

(4) If the liquidator elects to purchase the Member’s interest, the purchase money must be paid before the Company is deregistered and be raised by the liquidator in such manner as may be determined by Special Resolution.

(5) A Special Resolution must not be invalid, for the purposes of this section, by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the Company by or subject to the supervision of the Court, the Special Resolution must not be valid unless sanctioned by the Court.

*Duty of liquidator to call creditors' meeting in case of Insolvency*

**583.** If, in the case of a winding up, the liquidator is, at any time, of opinion that the Company will not be able to pay its debts in full within the period stated in the declaration under section 578, the liquidator must immediately notify the Registrar accordingly and call a meeting of the creditors, and must lay before the meeting a statement of the assets and liabilities of the Company.

*Duty of liquidator to call General Meeting at end of each year*

**584.** In the event of the winding up continuing for more than 1 year, the liquidator must summon a General Meeting of the Company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Registrar may allow, and must lay before the meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year.

*Final meeting and deregistration*

**585.—(1)** Subject to section 586, as soon as the Affairs of the Company are fully wound up, the liquidator must make up an account of the winding up, showing how the winding up has been conducted and the Property of the Company disposed of, and must call a General Meeting of the Company for the purpose of laying before it the account, and giving any explanation of the account.

(2) The meeting must be called by advertisement in the *Gazette* and in a newspaper published and circulating in Fiji and a notice Lodged in the Prescribed Form with the Registrar, specifying the time, place and object of the meeting, at least 30 days before the meeting.

(3) Within 14 days after the meeting, the liquidator must Lodge with the Registrar a copy of the account and a notice in the Prescribed Form confirming that the meeting has been held and its date.

(4) If a quorum is not present at the meeting, the liquidator must within 14 days of the meeting Lodge a notice in the Prescribed Form with the Registrar confirming that the meeting was duly called and that no quorum was present.

(5) The Registrar, on receiving the account and either of the returns prescribed in this section, must then register the documents and, on the expiration of 2 months from the registration of the documents, the Registrar must deregister the Company in accordance with Part 41.

(6) The Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the deregistration of the Company is to take effect for such time as the Court thinks fit.

(7) It must be the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar a certified copy of the order, using the Prescribed Form, for registration.

*Alternative provisions as to annual and final meetings in case of Insolvency*

**586.** Where section 583 has effect, sections 595 and 596 must apply to the winding up to the exclusion of sections 584 and 585 as if the winding up were a Creditors' Voluntary Winding Up and not a Members' Voluntary Winding Up, provided that the liquidator must not be required to call a meeting of creditors under section 595 at the end of the first year from the commencement of the winding up, unless the meeting held under section 583 is held more than 3 months before the end of that year.

*Division 5—Creditors' Voluntary Winding Up**Provisions applicable to a creditors' winding up*

**587.** The provisions of this Division must apply in relation to a Creditors' Voluntary Winding Up.

*Meeting of creditors*

**588.—**(1) The Company must cause a meeting of the creditors of the Company to be called within 14 days after the day of the General Meeting of the Company at which a resolution for voluntary winding up has been passed, and must cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the Company.

(2) The meeting must be called by advertisement in the *Gazette* and in a newspaper published and circulating in Fiji and a notice Lodged in the Prescribed Form with the Registrar, specifying the time, place and object of the meeting, at least 30 days before the meeting.

(3) The Directors of the Company must—

(a) cause a full statement of the position of the Company's Affairs, together with a list of the creditors of the Company and the estimated amount of their claims, to be laid before the meeting of the creditors; and

(b) appoint one Director to preside at the said meeting.

(4) It must be the duty of the Director appointed to preside at the meeting of the creditors to attend the meeting and preside at the meeting.

(5) If the meeting of the Company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) must have effect as if it had been passed immediately after the passing of the resolution for winding up the Company.

*Appointment of liquidator*

**589.—**(1) The creditors and the Company, at their respective meetings mentioned in section 588, may nominate a person to be liquidator for the purpose of winding up the Affairs and distributing the assets of the Company.

(2) If the creditors and the Company nominate different persons, the person nominated by the creditors must be liquidator. In that case, any Director, Member or creditor of the Company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for any order either directing that the person nominated as liquidator by the Company must be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person be liquidator instead of the person appointed by the creditors.

(3) If no person is nominated by the creditors, the person, if any, nominated by the Company must be liquidator.

*Appointment of committee of inspection*

**590.**—(1) The creditors at the meeting to be held in pursuance of section 588, or at any subsequent meeting, may, if they think fit, appoint not more than five persons to be members of a committee of inspection.

(2) Subject to the provisions of this section and to any rules made in this behalf, section 551, except section 551(1), must apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

*Fixing of liquidators' remuneration*

**591.** The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators.

*Cessation of Directors' powers on appointment of liquidator*

**592.** On the appointment of a liquidator, all the powers of the Directors must cease, except so far as the committee of inspection, or, if there is no such committee, the creditors sanction the continuance of the Directors' powers.

*Power to fill vacancy in office of liquidator*

**593.** If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

*Application of section 582 to a Creditors' Voluntary Winding Up*

**594.** Section 582 must apply in the case of a Creditors' Voluntary Winding Up as in the case of a Members' Voluntary Winding Up, with the modification that the powers of the liquidator under the section 582 must not be exercised, except with the sanction either of the Court or of the committee of inspection in substitution for the sanction of a Special Resolution.

*Duty of liquidator to call meetings of Company and of creditors at end of each year*

**595.** In the event of the winding up continuing for more than 1 year, the liquidator must summon a General Meeting of the Company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such

longer period as the Registrar may allow, and must lay before the meetings an account of his or her acts and dealings and of the conduct of the winding up during the preceding year.

*Final meeting and deregistration*

**596.**—(1) As soon as the Affairs of the Company are fully wound up, the liquidator must make up an account of the winding up, showing how the winding up has been conducted and the Property of the Company disposed of, and then must call a General Meeting of the Company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation of the account.

(2) The meeting must be called by advertisement in the *Gazette* and in a newspaper published and circulating in Fiji and a notice Lodged in the Prescribed Form with the Registrar, specifying the time, place and object of the meeting, at least 30 days before the meeting.

(3) Within 14 days after the meeting, the liquidator must Lodge with the Registrar a copy of the account and a notice Lodged in the Prescribed Form with the Registrar, confirming that the meeting has been held and its date.

(4) If a quorum is not present at the meeting, the liquidator must within 14 days of the meeting make Lodge a notice in the Prescribed Form with the Registrar confirming that the meeting was duly called and that no quorum was present.

(5) The Registrar, on receiving the account and either of the returns prescribed in this section, must then register the documents and, on the expiration of 2 months from the registration of the documents, deregister the Company in accordance with Part 41.

(6) The Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the deregistration of the Company is to take effect for such time as the Court thinks fit.

(7) It must be the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar a certified copy of the order, using the Prescribed Form, for registration.

*Division 6—Winding Up Subject to Supervision of Court*

*Power to order winding up subject to supervision*

**597.** When a Company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up must continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

*Effect of application for winding up subject to supervision*

**598.** An application for the continuance of a voluntary winding up subject to the supervision of the Court must, for the purpose of giving jurisdiction to the Court over actions, be deemed to be an application for winding up by the Court.

*Application of sections 525 and 526 to winding up subject to supervision*

**599.** A winding up subject to the supervision of the Court must, for the purposes of sections 525 and 526 be deemed to be a winding up by the Court.

*Power of Court to appoint or remove liquidators*

**600.**—(1) Where an order is made for a winding up subject to supervision, the Court may, by that or any subsequent order, appoint an additional liquidator.

(2) A liquidator appointed by the Court under this section must have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if the liquidator had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

*Effect of supervision order*

**601.**—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all the liquidator's powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up voluntarily, provided that none of the powers specified in section 543(1)(c), (d) or (e) are exercised by the liquidator except with the sanction of the Court or, in a case where the winding up was a Creditors' Voluntary Winding Up before the order was made, with the sanction of the Court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the Court is not a winding up by the Court for the purpose of the provisions of this Act, but, an order for a winding up subject to supervision must, for all purposes, be deemed to be an order for winding up by the Court, provided that, where the order for winding up subject to supervision was made in relation to a Creditors' Voluntary Winding Up in which a committee of inspection had been appointed, the order must be deemed to be an order for winding up by the Court for the purpose of section 551, except section 551(1).

## PART 41 — DEREGISTRATION

*Deregistration – voluntary*

**602.**—(1) An application to deregister a Company may be Lodged with the Registrar using the Prescribed Form by—

- (a) the Company;
- (b) a Director or Member of the Company; or
- (c) a liquidator of the Company.

(2) If the Company Lodges the application, it must nominate a person to be given notice of the deregistration.

(3) A person may apply only if—

- (a) all the Members of the Company resolve to the Deregister the Company;
- (b) the Company is not Carrying on Business;
- (c) the Company's assets are worth less than \$1,000;
- (d) the Company has paid all fees and penalties payable under this Act;
- (e) the Company has no outstanding liabilities; and
- (f) the Company is not a party to any legal proceedings.

(4) The applicant must give the Registrar any information that the Registrar requests about the current and former Officers of the Company.

(5) If the Registrar is not aware of any failure to comply with subsections (1) and (3), it must give notice of the proposed deregistration—

- (a) on the register of Companies maintained by the Registrar (including the date on which the notice was issued);
- (b) in a newspaper published and circulating in Fiji; and
- (c) in the *Gazette*.

(6) When 2 months have passed since the *Gazette* notice, the Registrar may deregister the Company.

(7) The Registrar must give notice of the deregistration to—

- (a) the applicant; or
- (b) the person nominated in the application to be given the notice.

(8) It is not necessary for the Company to confirm receipt of the notice of the proposed deregistration in order for the deregistration to proceed.

*Deregistration – initiated by the Registrar*

**603.**—(1) The Registrar may decide to deregister a Company if—

- (a) the Company has not Lodged any other documents under this Act in the last 18 months; and
- (b) the Registrar has no reason to believe that the Company is Carrying on Business.

(2) The Registrar may also decide to deregister a Company if the Company's Prescribed Registration Fee has not been paid in full at least 12 months after the due date for payment.

(3) The Registrar may also decide to deregister a Company if the Company is being wound up and the Registrar has reason to believe that—

- (a) the liquidator is no longer acting;
- (b) the Company's Affairs have been fully wound up and a return that the liquidator should have Lodged is at least 6 months late; or



- (c) the Company's Affairs have been fully wound up and the Company has no Property or not enough Property to cover the costs of obtaining a Court order for the Company's deregistration.

(4) If the Registrar decides to deregister a Company under this section, it must give notice of the proposed deregistration—

- (a) to the Company;
- (b) to the Company's liquidator (if any);
- (c) to the Company's Directors;
- (d) on the register of Companies maintained by the Registrar; and
- (e) in the *Gazette*.

(5) When 2 months have passed since the *Gazette* notice and the Company has not remedied the non-compliance which is the basis upon which the notice was issued, the Registrar may deregister the Company.

(6) The Registrar must give notice of the deregistration to everyone who was notified of the proposed deregistration under subsection (4)(a) or (b).

*Deregistration – following amalgamation or winding up*

**604.** The Registrar must deregister a Company—

- (a) if the Court orders the deregistration of the Company under—
  - (i) Part 36; or
  - (ii) section 570; or
- (b) in accordance with section 585.

*Effect of deregistration*

**605.—**(1) A Company ceases to exist on deregistration.

(2) On deregistration, all Property that the Company held on trust immediately before deregistration vests in the Government. If Property is vested in a liquidator on trust immediately before deregistration, that Property vests in the Government. This subsection extends to Property situated outside Fiji.

(3) On deregistration, all the Company's Property (other than any Property held by the Company on trust) vests in the Registrar. If Company Property is vested in a liquidator (other than any Company Property vested in a liquidator on trust) immediately before deregistration, that Property vests in the Registrar. This subsection extends to Property situated outside Fiji

(4) Under this section, the Government or the Registrar takes only the same Property rights that the Company itself held. If the Company held particular Property subject to a security or other interest or claim, the Government or the Registrar takes the Property subject to that interest or claim.



(5) The Government has, subject to its obligations as trustee of the trust, all the powers of an owner over Property vested in this section.

(6) The Registrar has all the powers of an owner over Property vested in it under this section.

(7) The Directors of the Company immediately before deregistration must keep the Company's Books for 3 years after the deregistration.

*What the Government or the Registrar does with the Property*

**606.**—(1) If Property vests in the Registrar under section 605, the Registrar may—

- (a) continue to act as trustee; or
- (b) apply to a Court for the appointment of a new trustee.

(2) If the Government continues to act as trustee in respect of the Property, subject to its obligations as trustee, the Government—

- (a) in the case of money – must credit the amount of the money to a special account established by Government for this purpose alone; or
- (b) otherwise—
  - (i) may sell or dispose of the Property as it thinks fit; and
  - (ii) if the Government does so – must credit the amount of the proceeds to a special account.

(3) If Property vests in the Registrar under section 605, the Registrar may—

- (a) dispose of or deal with the Property as it sees fit; and
- (b) apply any money it receives to defray expenses incurred by the Registrar in exercising its powers in relation to the Company under this Part.

(4) If any liability is imposed on Property under a law of the Government immediately before the Property vests in the Government under section 605, then—

- (a) immediately after that time, the liability applies to the Government as if the Government were a Company; and
- (b) the Government is liable to make notional payments to discharge that liability.

(5) Any Property that vests in the Government or the Registrar under section 605 remains subject to all liabilities imposed on the Property under a law and does not have the benefit of any exemption that the Property might otherwise have because it is vested in the Government or the Registrar. These liabilities include a liability that—

- (a) is a Charge or claim on the Property; and
- (b) arises under a law that imposes rates, taxes or other charges.

(6) The Government or the Registrar's obligation under this section is limited to satisfying the liabilities out of the Company's Property to the extent that the Property is properly available to satisfy those liabilities.

(7) The Government or the Registrar (as the case requires) must keep—

- (a) a record of Property that it knows is vested in it under this Part;
- (b) a record of its dealings with that Property;
- (c) accounts of all money received from those dealings; and
- (d) all accounts, vouchers, receipts and papers relating to the Property and that money.

*The Government and the Registrar's power to fulfil outstanding obligations of Deregistered Company*

**607.** The Government or the Registrar may do an act on behalf of the Company or its liquidator if the Government or the Registrar is satisfied that the Company or liquidator would be bound to do the act if the Company still existed.

*Claims against insurers of Deregistered Company*

**608.** A person may recover from the insurer of a Company that is Deregistered an amount that was payable to the Company under the insurance contract if—

- (a) the Company had a liability to the person; and
- (b) the insurance contract covered that liability immediately before deregistration.

*Reinstatement*

**609.—**(1) The Registrar may reinstate the registration of a Company within 10 years of the Company being Deregistered under this Part, if the Registrar is satisfied that the Company should not have been Deregistered.

(2) The Court may make an order that the Registrar reinstate the registration of a Company if—

- (a) an application for reinstatement is made to the Court by—
  - (i) a person aggrieved by the deregistration; or
  - (ii) a former liquidator of the Company; and
- (b) the Court is satisfied that it is just that the Company's registration be reinstated.

(3) If the Court makes an order under subsection (2), it may—

- (a) validate anything done between the deregistration of the Company and its reinstatement; and
- (b) make any other order it considers appropriate.

(4) The Registrar must give notice of a reinstatement in the *Gazette*. If the Registrar exercises its power under subsection (1) in response to an application by a person, the Registrar must also give notice of the reinstatement to the applicant.

(5) If a Company is reinstated, the Company is taken to have continued in existence as if it had not been deregistered. A person who was a Director of the Company immediately before deregistration becomes a Director again as from the time when the Registrar or the Court reinstates the Company. Any Property of the Company that is still vested in the Government or the Registrar reverts in the Company. If the Company held particular Property subject to a security or other interest or claim, the Company takes the Property subject to that interest or claim.

## PART 42—INSIDER TRADING

### *Division 1—Preliminary*

#### *Definitions*

**610.**—(1) In this Part—

Information is “generally available” if—

- (a) it consists of readily observable matter; or
- (b) both of the following sub-paragraphs apply—
  - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in Listed Securities of a kind whose price might be affected by the information; and
  - (ii) since it was made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following—
  - (i) information referred to in paragraph (a);
  - (ii) information made known as mentioned in sub-paragraph (b) (A).

“information” includes—

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
- (b) matters relating to the intentions, or likely intentions, of a person;

“inside information” means information in relation to which the following paragraphs are satisfied—

- (a) information is not generally available;

- (b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of Listed Securities;

(2) A reasonable person would be taken to expect information to have a “material effect” on the price or value of Listed Securities if (and only if) the information would, or would be likely to, influence persons who commonly acquire Securities in deciding whether or not to acquire or dispose of the first mentioned Securities.

(3) If a person incites, induces, or encourages an act or omission by another person, the first mentioned person is taken to “procure” the act or omission by the other person.

*Application of Division*

**611.** This Division applies to—

- (a) acts and omissions within Fiji in relation to Securities (regardless of where the issuer of the products is formed, resides or located and of where the issuer is Carrying on Business); and
- (b) acts and omissions outside this jurisdiction (and whether in Fiji or not) in relation to Listed Securities issued by—
  - (i) a person who is Carrying on Business in Fiji; or
  - (ii) a Company that is formed in Fiji.

*Information in possession of Officer of Company*

**612.** For the purposes of this Division—

- (a) a Company is taken to possess any information which an Officer of the Company possesses and which came into the Officer’s possession in the course of the performance of duties as such an Officer;
- (b) if an Officer of the Company knows any matter or thing because he or she is an Officer, it is to be presumed that the Company knows that matter or thing;
- (c) if an Officer of the Company, in that capacity, is reckless as to a circumstance or result, it is to be presumed that the Company is reckless as to that circumstance or result; and
- (d) if an Officer of the Company ought reasonably to know any matter or thing because he or she is an Officer, it is to be presumed that the Company ought reasonably to know that matter or thing.

*Information in possession of partner or employee of partnership*

**613.** For the purposes of this Division—

- (a) a member of a partnership is taken to possess any information—
  - (i) which another member of the partnership possesses and which came into the other member’s possession in the other member’s capacity as a member of the partnership; or

- (ii) which an employee of the partnership possesses and which came into his or her possession in the course of the performance of duties as such an employee; and
- (b) if a member or employee of a partnership knows any matter or thing because the member or employee is such a member or employee, it is to be presumed that every member of the partnership knows that matter or thing;
- (c) if a member or employee of a partnership, in that capacity, is reckless as to a circumstance or result, it is to be presumed that every member of the partnership is reckless as to that circumstance or result; and
- (d) if a member or employee of a partnership ought reasonably to know any matter or thing because he or she is such a member or employee, it is to be presumed that every member of the partnership ought reasonably to know that matter or thing.

### *Division 2—The Prohibited Conduct*

#### *Prohibited conduct by person in possession of inside information*

**614.** Subject to this Division, if—

- (a) a person (the insider) possesses inside information; and
- (b) the insider knows, or ought reasonably to know, that the matters specified in paragraphs (a) and (b) of the definition of inside information in section 610 are satisfied in relation to the information,

the insider must not (whether as principal or agent)—

- (i) apply for, acquire, or dispose of, relevant Listed Securities, or enter into an agreement to apply for, acquire, or dispose of, relevant Listed Securities;
- (ii) procure another person to apply for, acquire, or dispose of, relevant Listed Securities, or enter into an agreement to apply for, acquire, or dispose of, relevant Listed Securities; or
- (iii) directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to apply for, acquire, or dispose of, relevant Listed Securities, or enter into an agreement to apply for, acquire, or dispose of, relevant Listed Securities.

#### *Exception for withdrawal from Managed Investment Scheme*

**615.** Section 614 does not apply in respect of a withdrawal of Member from a Managed Investment Scheme if the amount paid to the Member of the Managed Investment Scheme on withdrawal is calculated (so far as is reasonably practicable) by reference to the underlying value of the scheme assets to which the Member's Interest relates, less any reasonable Charge for acquiring the Member's Interest.

*Exception for underwriters*

**616.**—(1) Section 614 does not apply in respect of—

- (a) applying for or acquiring Listed Securities under an underwriting agreement or a sub underwriting agreement;
- (b) entering into an agreement referred to in paragraph (a);
- (c) disposing of Listed Securities acquired under an agreement referred to in paragraph (a);
- (d) the communication of information in relation to Listed Securities to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such Listed Securities; or
- (e) the communication of information in relation to Listed Securities by a person who may be required under an underwriting agreement to apply for or acquire any such Listed Securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following—
  - (i) enter into a sub underwriting agreement in relation to any such Listed Securities;
  - (ii) apply for any such Listed Securities.

*Exception for acquisition pursuant to legal requirement*

**617.** Section 614 does not apply in respect of the acquisition of Listed Securities pursuant to a requirement imposed by this Act.

*Exception for information communicated pursuant to a legal requirement*

**618.** Section 614 does not apply in respect of the communication of information pursuant to a requirement imposed by law.

*Chinese wall arrangements by Companies*

**619.** A Company does not contravene section 614 by entering into a transaction or agreement at any time merely because of information in the possession of an Officer or employee of the Company if—

- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that Officer or employee;
- (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

*Chinese wall arrangements by partnerships etc.*

**620.**—(1) The members of a partnership do not contravene section 614 by entering into a transaction or agreement at any time merely because one or more (but not all) of the members, or an employee or employees of the partnership, are in actual possession of information if—

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons—
  - (i) a member or members who are taken to have possessed the information merely because another member or other members, or an employee or employees of the partnership, were in possession of the information;
  - (ii) an employee or employees of the partnership who was not or were not in possession of the information; and
- (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

(2) A member of a partnership does not contravene section 614 by entering into a transaction or agreement otherwise than on behalf of the partnership merely because the member is taken to possess information that is in the possession of another member or an employee of the partnership.

*Exception for knowledge of person's own intentions or activities*

**621.** A natural person does not contravene section 614 by entering into a transaction or agreement in relation to Listed Securities issued by another person merely because the person is aware that he or she proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to Listed Securities issued by the other person or by a third person.

*Exception for Companies*

**622.**—(1) A Company does not contravene section 614 by entering into a transaction or agreement in relation to Listed Securities issued by another person merely because the Company is aware that it proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to Listed Securities issued by the other person or by a third person.

(2) Subject to subsection (3), a Company does not contravene section 614 by entering into a transaction or agreement in relation to Listed Securities issued by another person merely because an Officer of the Company is aware that the Company proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to Listed Securities issued by the other person or by a third person.

(3) Subsection (2) does not apply unless the Officer or employee of the Company became aware of the matters referred to in that subsection in the course of the performance of duties as such an Officer or employee.

*Exception for Officers or agents of Company*

**623.**—(1) Subject to subsection (2), a person (called the “first person”) does not contravene section 614 by entering into a transaction or agreement on behalf of a person (called the “second person”) in relation to Listed Securities issued by another person (called the “third person”) merely because the first person is aware that the second person proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to Listed Securities issued by the third person or by a fourth person.

(2) Subsection (1) does not apply unless the first person became aware of the matters referred to in that subsection in the course of the performance of duties as an Officer or employee of the second person or in the course of acting as an agent of the second person.

*Powers of Court*

**624.** If, in a proceeding instituted under this Act, the Court finds that a contravention of section 614 has occurred, the Court may, in addition to any other orders that it may make under any other provision of this Act, make such order or orders as it thinks just, including, but without limiting the generality of the above, any one or more of the following orders —

- (a) an order restraining the exercise of rights attached to Listed Securities;
- (b) an order restraining the issue of Listed Securities;
- (c) an order restraining the acquisition or disposal of Listed Securities;
- (d) an order directing the disposal of Listed Securities;
- (e) an order vesting Listed Securities in the Registrar;
- (f) an order cancelling an agreement for the acquisition or disposal of Listed Securities;
- (g) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

## PART 43—OFFENCES

### *Division 1—General*

*Application of Crimes Decree 2009*

**625.** Subject to this Act, Chapter II of the Crimes Decree 2009 applies to all offences against this Act.



*General penalty provisions*

**626.** A person who—

- (a) does an act or thing that the person is forbidden to do by or under a provision of this Act;
- (b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or
- (c) otherwise contravenes a provision of this Act,

is guilty of an offence and—

- (i) is liable to pay a Penalty not exceeding the Maximum Penalty prescribed for a contravention of that provision in accordance with this Act, unless a provision of this Act provides that the person is or is not guilty of an offence; or
- (ii) if no Maximum Penalty is prescribed for a contravention of the provision in accordance with this Act, is liable to pay a Penalty not exceeding \$500, a provision of this Act provides that the person is or is not guilty of an offence.

*Penalties for Companies*

**627.** Where a Company is convicted of an offence against this Act, the penalty that the Court may impose is a fine not exceeding five times the maximum amount that, but for this section, the Court could impose as a Penalty for that offence.

*Penalty notices*

**628.—**(1) Where the Registrar has reason to believe that a person has committed an offence based on section 626 (in this section called a “prescribed offence”), the Registrar may, subject to subsection (2), give the person a notice in the Prescribed Form—

- (a) alleging that the person has committed the prescribed offence and giving the particulars in relation to the prescribed offence;
- (b) setting out the Penalty in respect of the offence; and
- (c) stating—
  - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing—
    - A. that the obligation to do the act or thing continues despite the service of the notice or the payment of the Penalty;
    - B. that if, within the period specified in the notice (being a period of at least 21 days), the person pays the Penalty to the Registrar specified in the notice and does the act or thing, no further action is taken against the person in relation to the prescribed offence; and

- C. that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or
- (ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—
  - A. that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed Penalty to the Registrar specified in the notice, no further action is taken against the person in relation to the prescribed offence; and
  - B. that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar specified in the notice, proceedings may be instituted against the person.

(2) Subsection (1) does not empower the Registrar—

- (a) to give a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence; or
- (b) to give a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 632.

(3) A notice under subsection (1) may be given to a natural person either personally or by post.

(4) Where a notice under subsection (1) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed Penalty to the Registrar specified in the notice, and does the act or thing – no proceedings may be instituted against the person in respect of the prescribed offence;
- (b) if, at the end of the period specified in the notice, the person has paid the prescribed Penalty to the Registrar specified in the notice but has not done the act or thing – no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 630 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed Penalty, the person had been convicted of an offence constituted by a failure to do that act or thing;
- (c) if, at the end of the period specified in the notice, the person has not paid the prescribed Penalty to the Registrar specified in the notice but had done the act or thing – proceedings may be instituted against the person in respect of the prescribed offence; or

- (d) if, at the end of the period specified in the notice, the person has not paid the prescribed Penalty to the Registrar specified in the notice and has not done the act or thing – the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.

(5) Where a notice under subsection (1) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed Penalty to the Registrar specified in the notice – no proceedings may be instituted against the person in respect of the prescribed offence; or
- (b) if, at the end of the period specified in the notice, the person has not paid the prescribed Penalty to the Registrar specified in the notice – proceedings may be instituted against the person in respect of the prescribed offence.

(6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence is not taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

*Offences committed partly in and partly out of the jurisdiction*

**629.** Where—

- (a) a person does or omits to do an act outside Fiji; and
- (b) if that person had done or omitted to do that act in Fiji, the person would, by reason of also having done or omitted to do an act in Fiji, have been guilty of an offence against this Act,

the person is guilty of that offence.

*Continuing offences*

**630.—**(1) Where—

- (a) by or under a provision, an act is or was required to be done within a particular period or before a particular time;
- (b) failure to do the act within that period or before that time constitutes an offence; and
- (c) the act is not done within that period or before that time,

then—

- (i) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is or has been convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
- (ii) subsection (3) applies.

(2) Where—

- (a) by or under a provision, an act is or was required to be done but neither a period nor a time for the doing of the act is or was specified;
- (b) failure to do the act constitutes an offence; and
- (c) a person is or has been convicted of a primary substantive offence in relation to failure to do the act,

then—

- (i) the obligation to do the act continues, despite the conviction, until the act is done; and
- (ii) subsection (3) applies.

(3) Where—

- (a) at a particular time, a person is or was first convicted of an offence in relation to failure to do the act as described in subsection (1) or (2); and
- (b) the failure to do the act continued after that time,

then—

- (i) the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continued or elapsed after that time and before the relevant day in relation to the further offence; and
- (ii) for the purposes of this Act and of the Crimes Decree 2009, the further offence is taken to be constituted by failure to do the act during so much of that period as so elapsed.

(4) Where a person is guilty, by virtue of subsection (3), of an offence in respect of the whole or a part of a particular period, the Penalty applicable to the offence is a fine of the amount obtained by multiplying \$50 by the number of days in that period, or in that part of that period, as the case may be.

(5) In this section—

“primary substantive offence”, in relation to a failure to do an act, means an offence (other than an offence of which a person is or was guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time;

“provision” means a section, or a subsection of a section, of this Act;

“required” includes directed.

*Proceedings— how taken*

**631.**—(1) Subject to this Act, in any proceedings for an offence against this Act, any information, charge, complaint or application may be laid or made by—

- (a) the Registrar;
- (b) the Attorney-General;
- (c) the Director of Public Prosecutions; or
- (d) another person authorised in writing by the Minister to institute the proceedings.

(2) An authorisation for the purposes of subsection (1)(c), may relate to all offences, or to specified offences, against this Act.

(3) Subject to this Act, in any proceedings for an offence against a Part of this Act for which the Reserve Bank is responsible for administering under section 13(1), any information, charge, complaint or application may be laid or made by the Reserve Bank.

(4) Nothing in this section affects the operation of any other Fiji law.

*Time for instituting criminal proceedings*

**632.** Despite anything in any other law, proceedings for an offence against this Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister's consent, at any later time.

*Certain persons to assist in prosecutions*

**633.**—(1) Where a prosecution in respect of an offence against this Act has been instituted, or the Registrar is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted, against a person (in this section referred to as the “defendant”), the Registrar may—

- (a) if the defendant is a natural person – require any person who is or was a partner, employee or agent of the defendant; or
- (b) if the defendant is a Company – require any person who is or was an Officer, employee or agent of the defendant,

to assist in the prosecution, and the person who is so required must give all assistance in connection with the prosecution that that person is reasonably able to give.

(2) The Registrar must not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of the Registrar, is or is likely to be a defendant in the proceedings or is or has been such a person's lawyer.

(3) If a person to whom subsection (1) relates fails to give assistance as required by that section, the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of the Registrar, order the person to comply with the requirement within such time, and in such manner, as the Court orders.

(4) In this section, agent, in relation to the defendant, includes a Financial Institution of the defendant and a person engaged as an Auditor by the defendant, whether that person is an employee or an Officer of the defendant or not.

*Contempt*

**634.** Nothing in this Act effects the powers of the Court in relation to the punishment of contempt of court.

*Orders of the Court*

**635.** The Court may rescind, vary or discharge any order made by it under this Act or suspend the operation of such order.

*Division 2—Civil Consequences of Contravening a Civil Penalty Provision*

*Declarations of contravention*

**636.**—(1) If a Court is satisfied that a person has contravened a provision in one of the following Parts—

- (a) Division 3 of Part 10;
- (b) Part 18;
- (c) Part 32;
- (d) Division 5 of Part 38;
- (e) Part 42;
- (f) Division 3 of Part 43

(called “Civil Penalty Provisions”),

it must make a declaration of contravention.

(2) A declaration of contravention must specify the following—

- (a) the Court that made the declaration;
- (b) the Civil Penalty Provision that was contravened;
- (c) the person who contravened the provision; and
- (d) the conduct that constituted the contravention.

*Declaration of contravention is conclusive evidence*

**637.** A declaration of contravention is conclusive evidence of the matters referred to in section 636(2).

*Pecuniary penalty orders*

**638.**—(1) A Court may order a person to pay the Registrar a pecuniary penalty in respect of each contravention of up to \$200,000 (in this Division called a “pecuniary penalty order”) if—

- (a) a declaration of contravention by the person has been made under section 636; and

(b) the contravention—

- (i) materially prejudices the interests of the Company or Managed Investment Scheme, or its Members; or
- (ii) materially prejudices the Company's ability to pay its creditors; or
- (iii) is serious.

(2) The penalty is a civil debt payable to the Registrar.

(3) The Registrar or the Government may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person.

(4) The debt arising from the order is taken to be a judgment debt.

*Compensation orders*

**639.**—(1) A Court may order a person to compensate a Company or Managed Investment Scheme for damage suffered by the Company or Managed Investment Scheme if the damage resulted from the contravention (in this section called a “compensation order”). The compensation order must specify the amount of the compensation.

(2) In determining the damage suffered by the Company or Managed Investment Scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.

(3) In determining the damage suffered by the Managed Investment Scheme for the purposes of making a compensation order, include any diminution in the value of the Property of the Managed Investment Scheme.

(4) If the Manager of the Managed Investment Scheme is ordered to compensate the scheme, the Manager must transfer the amount of the compensation to the Property of the Managed Investment Scheme. If anyone else is ordered to compensate the Managed Investment Scheme, the Manager may recover the compensation on behalf of the Managed Investment Scheme.

(5) A compensation order may be enforced as if it were a judgment of the Court.

*Who may apply for a declaration or order*

**640.**—(1) The Registrar may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

(2) The Company or the Manager of a Managed Investment Scheme may apply for a compensation order.

(3) The Company or the Manager of a Managed Investment Scheme may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the Company or Managed Investment Scheme. The Company or the Manager of a Managed Investment Scheme is entitled to be heard on all matters other than whether the declaration or order should be made.

(4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.

*Time limit for application for a declaration or order*

**641.** Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 5 years after the contravention.

*Civil proceedings after criminal proceedings*

**642.** The Court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

*Criminal proceedings during civil proceedings*

**643.**—(1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if—

- (a) criminal proceedings are started or have already been started against the person for an offence; and
- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

*Criminal proceedings after civil proceedings*

**644.** Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a Civil Penalty Provision regardless of whether—

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing a corporation under Part 12.

*Evidence given in proceedings for penalty not admissible in criminal proceedings*

**645.**—(1) Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if—

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a Civil Penalty Provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially same as the conduct that was claimed to constitute the contravention.



(2) However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

*The Registrar requiring person to assist*

**646.**—(1) This section applies in addition to section 633.

(2) The Registrar may require a person to give all reasonable assistance in connection with—

- (a) an application for a declaration of contravention or a pecuniary penalty order; or
- (b) criminal proceedings for an offence against this Act.

(3) The Registrar can require the person to assist in connection with an application for a declaration or order if, and only if—

- (a) it appears to the Registrar that someone other than the person required to assist may have contravened a Civil Penalty Provision; and
- (b) the Registrar suspects or believes that the person required to assist can give information relevant to the application.

(4) The Registrar can require the person to assist in connection with criminal proceedings if, and only if—

- (a) it appears to the Registrar that the person required to assist is unlikely to be a defendant in the proceedings; and
- (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings—
  - (i) an employee or agent (including a Financial Institution or Auditor) of the other person;
  - (ii) if the other person is a Company – an Officer or employee of the other person; or
  - (iii) if the other person is an individual – a partner of the other person.

(5) The Registrar can require the person to assist regardless of whether—

- (a) an application for the declaration or penalty order has actually been made; or
- (b) criminal proceedings for the offence have actually begun.

(6) The person cannot be required to assist if they are or have been a lawyer for—

- (a) in an application for a declaration or penalty order – the person suspected of the contravention; or
- (b) in criminal proceedings – a defendant or likely defendant in the proceedings.

(7) The requirement to assist must be given in writing.

(8) If a person is required to assist under this section and fails to do so, that person contravenes this section.

*Division 3—Offences in Relation to the Market (other than insider trading)*

*Interpretation*

**647.** In this Part, “financial market” means a market for Securities in Fiji, whether operated by a third party or not and including, but not limited, to a Securities Exchange.

*Market manipulation*

**648.** A person must not take part in, or carry out (whether directly or indirectly and whether in this jurisdiction or elsewhere) one or more transactions that have or are likely to have the effect of—

- (a) creating an artificial price for trading in Securities in or on a financial market; or
- (b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in Securities in or on a financial market.

*Creating a false or misleading appearance of active trading*

**649.—**(1) A person must not do, or omit to do, an act (whether in Fiji or elsewhere) if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance—

- (a) of active trading in Securities in or on a financial market; or
- (b) with respect to the market for, or the price for trading in, Securities in or on a financial market.

(2) For the purposes of subsection (1), a person is taken to have created a false or misleading appearance of active trading in Listed Securities on a financial market if the person—

- (a) enters into, or carries out, either directly or indirectly, any transaction of acquisition or disposal of any of those Securities that does not involve any change in the beneficial ownership of the Securities; or
- (b) makes an offer (the regulated offer) to acquire or to dispose of any of those Securities in the following circumstances—
  - (i) the offer is to acquire or to dispose of at a specified price; and
  - (ii) the person has made or proposes to make, or knows that a Related Body Corporate of the person has made or proposes to make an offer to acquire or dispose of Securities which is an offer regulated by this Act,

- (c) the same number, or substantially the same number, of those Securities at a price that is substantially the same as the price referred to in paragraph (b)(i).

(3) For the purposes of subsection (2)(a), an acquisition or disposal of Securities does not involve a change in the beneficial ownership if—

- (a) a person who had an interest in the Securities before the acquisition or disposal; or
- (b) an Related Body Corporate of such a person;
- (c) has an interest in the Securities after the acquisition or disposal.

(4) This section does not apply to holder of a Securities Industries Licence where the holder is acting on the bona fide instructions of the holder's client.

*Artificially maintaining trading price*

**650.**—(1) A person must not (whether in Fiji or elsewhere) enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in—

- (a) the price for trading in Securities in or on a financial market being maintained, inflated or depressed; or
- (b) fluctuations in the price for trading in Securities in or on a financial market.

(2) In determining whether a transaction is fictitious or artificial for the purposes of subsection (1), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

*Dissemination of information about illegal transactions*

**651.** A person must not (whether in Fiji or elsewhere) circulate or disseminate, or be involved in the circulation or dissemination of, any statement or information to the effect that the price for trading in Securities in or on a financial market will, or is likely to, rise or fall, or be maintained, because of a transaction, or other act or thing done, in relation to those Securities, if—

- (a) the transaction, or thing done, constitutes or would constitute a contravention of section 648, 649, 650, 652 or 653; and
- (b) the person, or a Related Body Corporate of the person—
  - (i) has entered into such a transaction or done such an act or thing; or
  - (ii) has received, or may receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising the circulation or dissemination of, the statement or information.

*False or misleading statements*

**652.** A person must not (whether in Fiji or elsewhere) make a statement, or disseminate information, if—

- (a) the statement or information is false in a material particular or is materially misleading;
- (b) the statement or information is likely to—
  - (i) induce persons in this jurisdiction to apply for Securities;
  - (ii) induce persons in this jurisdiction to dispose of or acquire Securities; or
  - (iii) have the effect of increasing, reducing, maintaining or stabilising the price for trading in Securities in or on a financial market; and
- (c) when the person makes the statement, or disseminates the information—
  - (i) the person does not care whether the statement or information is true or false; or
  - (ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

*Inducing persons to deal*

**653.—(1)** A person must not (whether in Fiji or elsewhere) induce another person to deal in Securities—

- (a) by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive;
- (b) by a dishonest concealment of material facts; or
- (c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if—
  - (i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and
  - (ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to the other person, or a class of persons that includes the other person.

(2) In this section—

“dishonest” means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the person to be dishonest according to the standards of ordinary people.

*Dishonest conduct*

**654.**—(1) A person must not (whether in Fiji or elsewhere) engage in dishonest conduct in relation to Securities.

(2) In this section—

“dishonest” means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the person to be dishonest according to the standards of ordinary people.

*Misleading or deceptive conduct (civil liability only)*

**655.**—(1) A person must not (whether in Fiji or elsewhere) engage in conduct, in relation to a Securities, that is misleading or deceptive or is likely to mislead or deceive.

(2) The reference in subsection (1) to engaging in conduct in relation to Securities includes (but is not limited to) any of the following—

- (a) dealing in Securities;
- (b) without limiting paragraph (a)—
  - (i) issuing Securities;
  - (ii) publishing a notice in relation to Securities;
  - (iii) making, or making an evaluation of, an offer under a Disclosure Document or a recommendation relating to such an offer;
  - (iv) carrying on negotiations, or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by this subsection.

(3) Conduct that contravenes Division 4 of Part 43 does not contravene subsection (1), and for this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

*Civil action for loss or damage for certain contraventions*

**656.**—(1) A person who suffers loss or damage by conduct of another person that was engaged in contravention of section 652, 653, 654 or 655 may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

(2) Despite subsection (1), if—

- (a) a person (called the “claimant”) makes a claim under subsection (1) in relation to—
  - (i) economic loss; or

- (ii) damage to Property;

caused by conduct of another person (called the “defendant”) that was done in contravention of section 655;

- (b) the claimant suffered the loss or damage as a result partly of the claimant’s failure to take reasonable care; and
- (c) the defendant—
  - (i) did not intend to cause the loss or damage; and
  - (ii) did not fraudulently cause the loss or damage,
- (d) the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the Court thinks just and equitable having regard to the claimant’s share in the responsibility for the loss or damage.

(3) An action under subsection (1) may be begun at any time within 5 years after the day on which the cause of action arose and this section does not affect any liability that a person has under any other law.

*Sections of this Division have effect independently of each other*

**657.** Subject to any express provision to the contrary, the various sections in this Division have effect independently of each other, and nothing in any of the sections limits the scope or application of any of the other sections.

#### *Division 4—Offences in Relation to Disclosure Documents*

*Offering Securities in a body that does not exist*

**658.** A person must not offer Securities of a body that has not been formed or does not exist if the offer would need disclosure to investors under Error! Reference source not found. if the body did exist.

This is so even if it is proposed to form or incorporate the body.

*Offering Securities without a current Disclosure Document*

**659.—(1)** A person must not make an offer of Securities, or distribute an application form for an offer of Securities, that needs disclosure to investors under Error! Reference source not found. unless the relevant Disclosure Document for the offer has been Lodged with the Registrar and the Reserve Bank if required under that Part.

(2) A person must not make an offer of Securities, or distribute an application form for an offer of Securities, that needs disclosure to investors under Error! Reference source not found. unless if a Disclosure Document is used for the offer – the offer or form is—

- (a) included in the Disclosure Document; or
- (b) accompanied by a copy of the Disclosure Document.

*Misstatement in, or omission from, Disclosure Document*

**660.**—(1) A person must not offer Securities under a Disclosure Document if there is—

- (a) a misleading or deceptive statement in—
  - (i) the Disclosure Document; or
  - (ii) any application form that accompanies the Disclosure Document; or
  - (iii) any document that contains the offer if the offer is not in a Disclosure Document or application form; or
- (b) an omission from the Disclosure Document of material required by this Act; or
- (c) a new circumstance that—
  - (i) has arisen since the Disclosure Document was Lodged; and
  - (ii) would have been required by this Act to be included in the Disclosure Document if it had arisen before the Disclosure Document was Lodged.

(2) A person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if they do not have reasonable grounds for making the statement. This subsection does not limit the meaning of a reference to a misleading statement or a statement that is misleading in a material particular.

*Right to recover for loss or damage resulting from contravention*

**661.** A person who suffers loss or damage because an offer of Securities under a Disclosure Document contravenes section 660(1) may recover the amount of the loss or damage from one of the following persons, whether or not the person committed, or was involved in, the contravention—

the person making the offer;

- (a) each director of the body making the offer if the offer is made by a body;
- (b) a person named in the Disclosure Document with their consent as a proposed director of the body whose Securities are being offered;
- (c) an underwriter (but not a sub underwriter) to the issue or sale named in the Disclosure Document with their consent; or
- (d) a person named in the Disclosure Document with their consent as having made a statement—
  - (i) that is included in the Disclosure Document; or
  - (ii) on which a statement made in the Disclosure Document is based.

*Due diligence defence for Bidder's Statement and Target's Statement*

**662.** A person does not commit an offence against section 660, and is not liable under section 661 for a contravention of section 660, because of a misleading or deceptive statement in a Prospectus or Bidder's Statement or Target's Statement if the person proves that they —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.

*General defences for all Disclosure Documents*

**663.—**(1) A person does not commit an offence against section 660, and is not liable under section 661 for a contravention of section 660, because of a misleading or deceptive statement in, or an omission from, a Disclosure Document if the person proves that they placed reasonable reliance on information given to them by—

- (a) if the person is a body – someone other than a Director, employee or agent of the body; or
- (b) if the person is an individual – someone other than an employee or agent of the individual.

(2) For the purposes of subsection (1), a person is not the agent of a body or individual merely because they perform a particular professional or advisory function for the body or individual.

(3) A person who is named in a disclosure document as—

- (a) being a proposed Director or underwriter;
- (b) making a statement included in the document; or
- (c) making a statement on the basis of which a statement is included in the document.

(4) does not commit an offence against section 660, and is not liable under section 661 for a contravention of section 660, because of a misleading or deceptive statement in, or an omission from, a Disclosure Document if the person proves that they publicly withdrew their consent to being named in the document in that way.

(5) A person does not commit an offence against section 660, and is not liable under section 661 for a contravention of section 660, because of a new circumstance that has arisen since the Disclosure Document was Lodged if the person proves that they were not aware of the matter.

*Restrictions on advertising and publicity*

**664.—**(1) If an offer, or intended offer, of Securities needs a Disclosure Document, a person must not—

- (a) advertise the offer or intended offer; or



(b) publish a statement that—

- (i) directly or indirectly refers to the offer or intended offer; or
- (ii) is reasonably likely to induce people to apply for the Securities.

(2) Subsection (1) does not apply if the advertisement or publication is authorised by subsection (4), (5), (6) or (7).

(3) In deciding whether a statement—

- (a) indirectly refers to an offer, or intended offer, of Securities; or
- (b) is reasonably likely to induce people to apply for Securities;

a Court may have regard to whether the statement—

- (i) forms part of the normal advertising of a body's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
- (ii) communicates information that materially deals with the affairs of the body; and
- (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a Disclosure Document.

(4) A person may disseminate a Disclosure Document that has been Lodged with the Registrar and the Reserve Bank without contravening subsection (1).

(5) Before the Disclosure Document is Lodged, an advertisement or publication does not contravene subsection (1) if the offer is of Securities in a class already quoted on a Securities Exchange includes a statement that—

- (a) if the Securities are likely to be offered by way of issue – identifies the issuer of the Securities;
- (b) in any case – a Disclosure Document for the offer will be made available when the Securities are offered;
- (c) indicates when and where the Disclosure Document is expected to be made available;
- (d) a person should consider the Disclosure Document in deciding whether to acquire the Securities; and
- (e) anyone who wants to acquire the Securities will need to complete the application form that will be in or will accompany the Disclosure Document.

(6) After the Disclosure Document is Lodged, an advertisement or publication does not contravene subsection (1) if it includes a statement that—

- (a) identifies if the Securities are offered by way of issue – the issuer of the Securities;
- (b) indicates that the Disclosure Document for the offer is available and where it can be obtained;
- (c) the offers of the Securities will be made in, or accompanied by, a copy of the Disclosure Document;
- (d) a person should consider the Disclosure Document in deciding whether to acquire the Securities;
- (e) anyone who wants to acquire the Securities will need to complete the application form that will be in or will accompany the Disclosure Document.

(7) An advertisement or publication does not contravene subsection (1) if it—

- (a) relates to an offer of Securities of a Listed body and consists of a notice or report by the body, or one of its Officers, about its affairs to the relevant Securities Exchange;
- (b) consists solely of a notice or report of a general meeting of the body;
- (c) consists solely of a report about the body that is published by the body and does not—
  - (i) contain information that materially affects affairs of the body other than information previously made available in a Disclosure Document that has been Lodged, an Annual Report or a report referred to in paragraph (a) or (b); and
  - (ii) refer (whether directly or indirectly) to the offer;
- (d) is a news report or is genuine comment, in a newspaper or periodical or on radio or television relating to a—
  - (i) Disclosure Document that has been Lodged or information contained in such a disclosure document; or
  - (ii) notice or report covered by paragraph (a), (b) or (c); or
- (e) is a report about the Securities of a body or proposed body published by someone who is not—
  - (i) the body;
  - (ii) acting at the instigation of, or by arrangement with, the body;
  - (iii) a Director of the body; or
  - (iv) a person who has an interest in the success of the issue or sale of the Securities.

- (f) paragraphs (d) and (e) do not apply if anyone gives consideration or another benefit for publishing the report.

(8) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of—

- (a) publishing a newspaper or magazine; or
- (b) broadcasting by radio or television;
- (c) and the person did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

*Obligation to keep consents and other documents*

**665.** A person who offers Securities under a Disclosure Document must keep a copy of the Disclosure Document and any consents required under this Act in relation to the Disclosure Document.

*Division 5—Continuous Disclosure*

*Continuous disclosure – Listed entity bound by a disclosure requirement in market Listing Rules*

**666.**—(1) Subsection (2) applies to a Listed entity if provisions of the Listing Rules of a Securities Exchange in relation to that entity require the entity to notify the Securities Exchange of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market.

(2) If—

- (a) this subsection applies to a Listed entity;
- (b) the entity has information that those provisions require the entity to notify to the Securities Exchange; and
- (c) that information is—
  - (i) not generally available; and
  - (ii) information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities of the entity,

the entity must notify the Securities Exchange of that information in accordance with those provisions.

(3) A person does not contravene subsection (2) if the person proves that they—

- (a) took all steps (if any) that were reasonable in the circumstances to ensure that the Listed entity complied with its obligations under subsection (2); and
- (b) after doing so, believed on reasonable grounds that the Listed entity was complying with its obligations under that subsection.

(4) For the purposes of the application of subsection (2) to a Listed entity that is an undertaking to which Interests in a Managed Investment Scheme relate, the obligation of the entity to notify the Securities Exchange of information is an obligation of the Manager of the Managed Investment Scheme.

(5) Nothing in section subsection (2) is intended to affect or limit the situations in which action can be taken (otherwise than by way of a prosecution for an offence based on subsection (2)) in respect of a failure to comply with provisions referred to in subsection (1).

(6) If the Listing Rules of a Securities Exchange in relation to a Listed entity contain provisions of a kind referred to in subsection (1), the Securities Exchange must ensure that those provisions are available, on reasonable terms, to—

- (a) the entity; or
- (b) if the entity is an undertaking to which Interests in a Managed Investment Scheme relate – the undertaking’s Manager.

(7) Information is generally available for the purposes of this section if it is generally available as defined in section 610.

(8) For the purposes of this section, a reasonable person would be taken to expect information to have a material effect on the price or value if it would have a material effect as defined in section 610.

### *Division 6—Other Services*

#### *Offering Securities in breach of the Act*

**667.** A person must not offer Securities otherwise than in accordance with this Act.

#### *False or misleading statements*

**668.—**(1) A Company must not advertise or publish—

- (a) a statement of the amount of its Share capital that is false or misleading; or
- (b) a statement in which the total of all amounts paid and unpaid on Shares in the Company is stated but the amount of paid up Share capital or the amount of any Charge on uncalled Share capital is not stated.

(2) A person who, in a document required by or for the purposes of this Act or Lodged with or submitted to the Registrar, makes or authorises the making of a statement that to the person’s knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person’s knowledge misleading in a material respect, is guilty of an offence.

(3) A person who makes or authorises the making of a statement that is based on information that to the person’s knowledge—

- (a) is false or misleading in a material particular; or

- (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

is, for the purposes of subsection (2), taken to have made or authorised the making of a statement that to the person's knowledge was false or misleading in a material particular.

- (4) A person who, in a document required by or for the purposes of this Act or Lodged—

- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
- (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

- (5) For the purposes of subsections (2) and (4), where—

- (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be Lodged; and
- (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect,

the person is taken to have authorised the making of the statement or the omission of the matter or thing.

*False information etc.*

**669.**—(1) An Officer or employee of a Company who makes available or gives information, or authorises or permits the making available or giving of information, to—

- (a) a Director, Auditor, Member, Debenture Holder or trustee for Debenture Holders of the Company;
- (b) if the Company is taken for the purposes of this Act to be controlled by another Company – an Auditor of the other Company; or
- (c) a Securities Exchange,

being information, whether in documentary or any other form, that relates to the Affairs of the Company and that, to the knowledge of the Officer or employee—

- (i) is false or misleading in a material particular; or
- (ii) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is guilty of an offence.

(2) An Officer or employee of a Company who makes available or gives information, or authorises or permits the making available or giving of information, to—

- (a) a Director, Auditor, Member, Debenture Holder or trustee for Debenture Holders of the Company;
- (b) if the Company is taken for the purposes of this Act to be controlled by another Company – an Auditor of the other Company; or
- (c) a Securities Exchange,

being information, whether in documentary or any other form, that relates to the Affairs of the Company that—

- (i) is false or misleading in a material particular; or
- (ii) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

without having taken reasonable steps to ensure that the information—

- A. was not false or misleading in a material particular; and
- B. did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect,

is guilty of an offence.

(3) Where information is made available or given to a person in response to a question asked by that person, the question and the information are to be considered together in determining whether the information was false or misleading.

*Obstructing or hindering the Registrar*

**670.** A person must not, without lawful excuse, obstruct or hinder the Registrar, or any other person, in the performance or exercise of a function or power under this Act.

*Division 7—Jurisdiction and Powers of the Court*

*Jurisdiction*

**671.** Jurisdiction is conferred on the Court with respect to all matters arising under this Act.

*Power to grant relief*

**672.—**(1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the Court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly and that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the Court may relieve the person either wholly or partly from liability on such terms as the Court thinks fit.

(2) This section applies to a person who is—

- (a) an Officer or employee of a Company;
- (b) an Auditor of a Company, whether or not the person is an Officer or employee of the Company;
- (c) an expert in relation to a matter—
  - (i) relating to a Company; and
  - (ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or
- (d) a Receiver or Manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a Company.

*Power of Court to give directions with respect to meetings ordered by the Court*

**673.** Where, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

*Irregularities*

**674.—**(1) In this section, unless the contrary intention appears—

- (a) a reference to a proceeding under this Act is a reference to any proceeding, whether a legal proceeding or not; and
- (b) a reference to a procedural irregularity includes a reference to—
  - (i) the absence of a quorum at a meeting of a Company or a Managed Investment Scheme, at a meeting of Directors or creditors of a Company or Manager of a Managed Investment Scheme, at a joint meeting of creditors and Members of a Company or a Managed Investment Scheme; and
  - (ii) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, being a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) If a Member does not have a reasonable opportunity to participate in a meeting of Members, or part of a meeting of Members, held at two or more venues, the meeting will only be invalid on that ground if—

- (a) the Court is of the opinion that —
  - (i) a substantial injustice has been caused or may be caused; and
  - (ii) the injustice cannot be remedied by any order of the Court; and
- (b) the Court declares the meeting or proceeding, or that part of it, invalid.

(5) Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes—

- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a Company is not invalid by reason of any contravention of a provision of this Act or a provision of a Company's Articles of Association;
- (b) an order directing the rectification of any register kept by the Registrar under this Act;
- (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
- (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation including an order extending a period where the period concerned ended before the application for the order was made or abridging the period for doing such an act, matter or thing, or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the Court thinks fit.

(6) An order may be made under subsection 5(a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(7) The Court must not make an order under this section unless it is satisfied—

- (a) in the case of an order referred to in subsection (5)(a)—
  - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;
  - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or



- (iii) that it is just and equitable that the order be made;
- (b) in the case of an order referred to in subsection (5)(a), that the person subject to the civil liability concerned acted honestly; and
- (c) in every case, that no substantial injustice has been or is likely to be caused to any person.

*Power of Court to prohibit payment or transfer of money, Securities or other Property*

**675.—(1) Where—**

- (a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;
- (b) a prosecution has commenced against a person for a contravention of this Act; or
- (c) a civil proceeding has commenced against a person under this Act;
- (d) and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an “aggrieved person”) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called the “relevant person”), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for Securities or other Property, the Court may, on application by the Registrar or by an aggrieved person, make one or more of the following orders—
  - (i) an order prohibiting a person who is indebted to the relevant person or to a Related Body Corporate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
  - (ii) an order prohibiting the taking or sending out of this jurisdiction, or out of Fiji, by a person of money of the relevant person or of a Related Body Corporate of the relevant person;
  - (iii) an order prohibiting the taking, sending or transfer by a person of Securities or other Property of the relevant person, or of a Related Body Corporate of the relevant person—
    - A. from a place in this jurisdiction to a place outside Fiji including the transfer of Securities from a register in this jurisdiction to a register outside Fiji); or
    - B. from a place in Fiji to a place outside Fiji including the transfer of Securities from a register in Fiji to a register outside Fiji;

- (iv) an order appointing—
  - A. if the relevant person is a natural person – a Receiver or Manager or trustee, having such powers as the Court orders, of the Property or of part of the Property of that person; or
  - B. if the relevant person is a Company – a Receiver or Manager, having such powers as the Court orders, of the Property or of part of the Property of that person;
- (v) if the relevant person is a natural person, an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit; or
- (vi) if the relevant person is a natural person, an order prohibiting that person from leaving Fiji without the consent of the Court.

(2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application on the condition of an undertaking as to damages.

(3) Nothing in this section affects the powers that the Court has apart from this section.

#### *Injunctions*

**676.**—(1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Act;
- (b) attempting to contravene this Act;
- (c) aiding, abetting, counselling or procuring a person to contravene this Act;
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act,

the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of—

- (a) the Registrar; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction, on such terms as the Court thinks appropriate, requiring the first mentioned person to do that act or thing.

(3) Where an application for an injunction under this section has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a subsection applies.

(4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under this section on the condition of an undertaking as to damages.

(5) The Court may discharge or vary an injunction granted under this section.

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first mentioned person refuses or fails to do that act or thing.

(8) Where the Registrar applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

*Order to disclose information or publish advertisements*

**677.** Without limiting section 676, if, on the application of the Registrar, the Court is satisfied that a person has engaged in conduct constituting a contravention of this Act, the Court may make either or both of the following orders against that person or a person involved in the contravention—

- (a) an order requiring the person to whom it is directed to disclose, in the manner specified in the order, to—
  - (i) the public;
  - (ii) a particular person;
  - (iii) a particular class of persons; or
  - (iv) the information, or information of a kind, that is specified in the order and is in the person’s possession or to which the person has access; or
- (b) an order requiring the person to whom it is directed to publish, at the person’s own expense, in the manner and at times specified in the order, advertisements whose terms are specified in, or are to be determined in accordance with, the order.

*Division 8—Proceedings**The Registrar’s power to intervene in proceedings*

**678.**—(1) The Registrar may intervene in any proceeding relating to a matter arising under this Act.

(2) Where the Registrar intervenes in a proceeding referred to in subsection (1), the Registrar is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.

*Civil proceedings not to be stayed*

**679.** No civil proceedings under this Act are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

*Division 9 – Protection for Whistleblowers**Disclosures qualifying for protection under this Part*

**680.** A disclosure of information by a person (the “discloser”) qualifies for protection under this Part if—

- (a) the discloser is—
  - (i) an Officer of a Company;
  - (ii) an employee of a Company;
  - (iii) a person who has a contract for the supply of services or goods to a Company; or

- (iv) an employee of a person who has a contract for the supply of services or goods to Company;
- (b) the disclosure is made to—
  - (i) the Registrar;
  - (ii) the Company's Auditor or a member of an audit team conducting an audit of the Company;
  - (iii) an Officer of the Company; or
  - (iv) a person authorised by the Company to receive disclosures of that kind;
- (c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure;
- (d) the discloser has reasonable grounds to suspect that the information indicates that—
  - (i) the Company has, or may have, contravened a provision of this Act; or
  - (ii) an Officer or employee of the Company has, or may have, contravened a provision of this Act;
- (e) the discloser makes the disclosure in good faith.

*Disclosure that qualifies for protection not actionable*

- 681.**—(1) If a person makes a disclosure that qualifies for protection under this Part—
- (a) the person is not subject to any civil or criminal liability for making the disclosure; and
  - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
- (2) Without limiting subsection(1)—
- (a) the person has qualified privilege in respect of the disclosure; and
  - (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting subsections (1)(b) and (2)(b), if the Court is satisfied that—
- (a) a person (called the “employee”) is employed in a particular position under a contract of employment with another person (called the “employer”);
  - (b) the employee makes a disclosure that qualifies for protection under this Part; and

- (c) the employer purports to terminate the contract of employment on the basis of the disclosure,

the Court may order that the employee be reinstated in that position or a position at a comparable level.

*Victimisation prohibited*

**682.**—(1) A person (called the “first person”) contravenes this subsection if—

- (a) the first person engages in conduct;
- (b) the first person’s conduct causes any detriment to another person (called the “second person”);
- (c) the first person intends that his or her conduct cause detriment to the second person; and
- (d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

(2) A person (the “first person”) contravenes this subsection if—

- (a) the first person makes to another person (the “second person”) a threat to cause any detriment to the second person or to a third person;
- (b) the first person—
  - (i) intends the second person to fear that the threat will be carried out; or
  - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
- (c) the first person makes the threat because a person—
  - (i) makes a disclosure that qualifies for protection under this Part; or
  - (ii) may make a disclosure that would qualify for protection under this Part.

(3) For the purposes of subsection (2), a threat may be—

- (a) express or implied; or
- (b) conditional or unconditional.

(4) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

*Confidentiality requirements for Company, Officers and employees and Auditors*

**683.**—(1) A person (called the “offender”) is guilty of an offence against this subsection if—

- (a) a person makes a disclosure of information that qualifies for protection under this Part;

- (b) the offender discloses one of the following called “confidential information”—
  - (i) the information disclosed in the qualifying disclosure;
  - (ii) the identity of the discloser; or
  - (iii) information that is likely to lead to the identification of the discloser; and
- (c) the confidential information is information that the offender obtained directly or indirectly because of the qualifying disclosure; and
- (d) either—
  - (i) the offender is the person to whom the qualifying disclosure is made; or
  - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (e) the disclosure referred to paragraph (b) is not authorised under subsection (2).

(2) The disclosure referred to in subsection(1)(b) is authorised under this subsection if it is made to—

- (a) the Registrar; or
- (b) someone else with the consent of the discloser.

### *Division 10 – Accessorial Liability*

#### *Accessorial liability*

**684.—**(1) A person commits an offence if they are involved in a contravention of this Act.

- (2) A person is involved in a contravention if, and only if, the person has—
  - (a) aided, abetted, counselled or procured the contravention;
  - (b) induced, whether by threats or promises or otherwise, the contravention;
  - (c) been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (d) conspired with others to effect the contravention.

## PART 44—INVESTIGATIONS AND INFORMATION-GATHERING

*Division 1—Investigations**Contravention*

**685.** Where a person fails to comply with a provision of this Part or a requirement or direction in accordance with a provision of this Part, the person contravenes this section.

*General powers of investigation*

**686.**—(1) The Registrar or the Reserve Bank may make such investigations as it thinks expedient for the due administration of this Act where the Registrar or the Reserve Bank has reason to suspect that there may have been committed—

- (a) a contravention of this Act; or
- (b) a contravention of another law of Fiji, being a contravention that—
  - (i) concerns the management or affairs of a company or managed Investment Scheme; or
  - (ii) involves fraud or dishonesty and relates to a company or managed investment scheme or to securities.

(2) Where the Reserve Bank has reason to suspect that unacceptable circumstances within the meaning of section 263 have, or may have, occurred, the Reserve Bank may make such investigations as it thinks expedient.

(3) If the Registrar and the Reserve Bank has reason to suspect that a liquidator registered under this Act—

- (a) has not, or may not have, faithfully performed his or her duties; or
- (b) is not, or may not be, faithfully performing his or her duties.

(4) The Registrar and the Reserve Bank may make such investigation as it thinks expedient for the due administration of the corporations legislation (other than the excluded provisions).

*Minister may direct investigations*

**687.**—(1) Where, in the Minister's opinion, it is in the public interest for a particular matter to which subsection (2) applies to be investigated, he or she may by writing direct the Registrar or the Reserve Bank to investigate that matter.

(2) This subsection applies to a matter relating to any of the following—

- (a) an alleged or suspected contravention of this Act; or
- (b) an alleged or suspected contravention of another law of Fiji, being a contravention that—
  - (i) concerns the management or Affairs of a Company or Managed Investment Scheme; or



- (ii) involves fraud or dishonesty and relates to a Company or Managed Investment Scheme or to Securities.

(3) The Registrar or the Reserve Bank, as applicable, must comply with a direction under subsection (1).

(4) A direction under subsection (1) does not prevent the Registrar or the Reserve Bank from delegating a function or power.

*Final report on investigation*

**688.**—(1) At the end of an investigation under this Division, the Registrar or Reserve Bank, as applicable, may prepare a report about the investigation and must do so if the Minister so directs.

(2) A report under this section must set out—

- (a) the findings of the Registrar or the Reserve Bank, as applicable, about the matters investigated;
- (b) the evidence and other material on which those findings are based; and
- (c) such other matters relating to, or arising out of, the investigation as the Registrar or the Reserve Bank, as applicable, think fit or the Minister directs.

*Distribution of report*

**689.**—(1) As soon as practicable after preparing a report under this Division, the Registrar or Reserve Bank, as applicable, must give a copy of the report to the Minister.

(2) Where a report, or part of a report, under this Division relates to a person's affairs to a material extent, the Registrar or Reserve Bank, as applicable, may, at the person's request or of its own motion, give to the person a copy of the report or of part of the report.

(3) The Minister may cause the whole or a part of a report under this Division to be printed and published.

*Division 2—Examination of Persons*

*Notice requiring appearance for examination*

**690.**—(1) This section applies where the Registrar or the Reserve Bank, on reasonable grounds, suspects or believes that a person can give information relevant to a matter that it is investigating, or is to investigate, under Division 1 of this Part.

(2) The Registrar or the Reserve Bank may, by written notice in the Prescribed Form given to the person, require the person—

- (a) to give to the Registrar or the Reserve Bank, as applicable, all reasonable assistance in connection with the investigation; and
- (b) to appear before a specified staff member for examination on oath and to answer questions.

(3) A notice given under subsection (2) must—

- (a) state the general nature of the matter referred to in subsection (1); and
- (b) set out the effect of subsection (1).

*Proceedings at examination*

**691.** The remaining provisions of this Division apply where, pursuant to a requirement made under section 690 for the purposes of an investigation under Division 1 of this Part, a person (in this Division called the “examinee”) appears before another person (in this Division called the “inspector”) for examination.

*Requirements made of examinee*

**692.—**(1) The inspector may examine the examinee on oath or affirmation and may, for that purpose—

- (a) require the examinee to either take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.

(3) The inspector may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Registrar or the Reserve Bank is investigating, or is to investigate, under Division 1 of this Part.

*Examination to take place in private*

**693.—**(1) The examination must take place in private and the inspector may give directions about who may be present during it, or during a part of it.

(2) A person must not be present at the examination unless he or she—

- (a) is the inspector or the examinee;
- (b) is a staff member approved by the Registrar or the Reserve Bank, as applicable; or
- (c) is entitled to be present by virtue of—
  - (i) a direction under subsection (1); or
  - (ii) section 694(1).

*Examinee’s lawyer may attend*

**694.—**(1) The examinee’s lawyer may be present at the examination and may, at such times during it as the inspector determines—

- (a) address the inspector; and
- (b) examine the examinee; or
- (c) about matters about which the inspector has examined the examinee.

(2) If, in the inspector's opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the inspector may require the person to stop addressing the inspector, or examining the examinee, as the case requires.

*Record of examination*

**695.**—(1) The inspector may, and must if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing—

- (a) the inspector may require the examinee to read it, or to have it read to him or her, and may require him or her to sign it; and
- (b) the inspector must, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions (if any) as the inspector imposes.

*Giving to other persons copies of record*

**696.**—(1) The Registrar or the Reserve Bank, as applicable, may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to a person's lawyer if the lawyer satisfies the Registrar or the Reserve Bank, as applicable, that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related.

(2) If the Registrar or the Reserve Bank, as applicable, gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, a proceeding—

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Registrar or the Reserve Bank, as applicable, may, subject to such conditions (if any) as it imposes, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

*Copies given subject to conditions*

**697.** If a copy is given to a person under sections 695(2), 696(1) and 693(3) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

*Record to accompany report*

**698.**—(1) If a report about the investigation referred to in section 691 is prepared under section 688, each record (if any) of the examination must accompany the report.

(2) If—

- (a) in the opinion of the Registrar or the Reserve Bank, as applicable, a statement made at an examination is relevant to any other investigation under Division 1 of this Part;

- (b) a record of the statement was made under section 695; and
  - (c) a report about the other investigation is prepared under section 688;
- (3) A copy of the record must accompany the report.

*Division 3—Inspection Of Books And Audit Information Gathering*

*When certain powers may be exercised*

**699.** A power conferred by this Division (other than section 700) may only be exercised—

- (a) for the purposes of the performance or exercise of any functions of the Registrar or the Reserve Bank, as applicable, and powers under this Act;
- (b) for the purposes of ensuring compliance with this Act; or
- (c) in relation to—
  - (i) an alleged or suspected contravention of this Act; or
  - (ii) an alleged or suspected contravention of another law of Fiji, being a contravention that—
    - A. concerns the management or Affairs of a Company or Managed Investment Scheme; or
    - B. involves fraud or dishonesty and relates to a Company or Managed Investment Scheme or to Securities.
- (d) for the purposes of an investigation under Division 1 of this Part.

*The Registrar or Reserve Bank may inspect Books without charge*

**700.**—(1) A Book that this Act requires a person to keep must be open for inspection (without charge) by a person authorised in writing by the Registrar, or the Reserve Bank, as applicable.

(2) A person authorised under this section may require a person in whose possession the Book is to make the Book available for inspection by the first mentioned person.

(3) An authorisation under this section may be of general application or may be limited by reference to the Books to be inspected.

*Notice to produce Books about Affairs of Company or Managed Investment Scheme*

**701.** The Registrar, or Reserve Bank, as applicable may give a written notice in the Prescribed Form to a Company or the Manager of a Managed Investment Scheme requiring the production to a specified staff member, at a specified place and time, of specified Books relating to Affairs of the Company or the Managed Investment Scheme.

*Notice to produce Books about Securities*

**702.** The Reserve Bank may give to—

- (a) a person operating a Securities Exchange or Central Depository;

- (b) a member of the board of a Company operating a Securities Exchange or Central Depository;
- (c) a holder of a Securities Industry Licence; or
- (d) any other person who, in the Reserve Bank's opinion, has been a party to a dealing in Securities;
- (e) a written notice in the Prescribed Form requiring the production to a specified staff member, at a specified place and time, of specified Books relating to—
  - (i) the business or affairs of a Securities Exchange or Central Depository;
  - (ii) a dealing in Securities;
  - (iii) advice given, or an analysis or report issued or published, about Securities; or
  - (iv) the character or financial position of, a person specified in paragraphs (a), (b), (c) or (d).

*Notice to produce documents in person's possession*

**703.** The Registrar, or the Reserve Bank, as applicable, may give to a person a written notice in the Prescribed Form requiring the production to a specified staff member, at a specified place and time, of specified Books that are in the person's possession and that relate to the question whether a person complied with—

- (a) an alleged or suspected contravention of this Act; or
- (b) an alleged or suspected contravention of another law of Fiji, being a contravention that—
  - (i) concerns the management or affairs of a company or managed investment scheme; or
  - (ii) involves fraud or dishonesty and relates to a company or managed investment scheme or to securities.

*Powers where Books not produced*

**704.** Where a person fails to produce particular books in compliance with a requirement made by another person under this division, the other person may require the first mentioned person to state—

- (a) where the Books may be found; and
- (b) who last had possession, custody or control of the Books and where that person may be found.

*Division 4—Requirements to Disclose Information**When certain powers may be exercised*

**705.** A power conferred under this Division may only be exercised—

- (a) for the purposes of the performance or exercise of any functions of the Registrar or the Reserve Bank, as applicable, and powers under this Act;
- (b) for the purposes of ensuring compliance with this Act;
- (c) in relation to—
  - (i) an alleged or suspected contravention of this Act; or
  - (ii) an alleged or suspected contravention of another law of Fiji, being a contravention that—
    - A. concerns the management or affairs of a company or managed investment scheme; or
    - B. involves fraud or dishonesty and relates to a company or managed investment scheme or to securities; or
- (d) for the purposes of an investigation under Division 1 of this Part.

*Acquisitions and disposals of Securities*

**706.—**(1) The Reserve Bank may require the holder a Securities Industry Licence to disclose to it, in relation to an acquisition or disposal of Securities—

- (a) whether the acquisition or disposal was effected on another person's behalf and, if so—
  - (i) the name of the other person; and
  - (ii) the nature of the instructions given to the person who carries on a financial services business in relation to the dealing; or
- (b) the name of the person from or through whom the Securities were acquired; or
- (c) the name of the person to or through whom the Securities were disposed; and
- (d) as the case may be, and the nature of the instructions given to the holder of the Securities Industry Licence in relation to the acquisition or disposal.

(2) The Reserve Bank may require a person who operates a Securities Exchange or Central Depository to disclose to the Reserve Bank, in relation to an acquisition or disposal of Securities on that Securities Exchange or Central Depository, the names of the persons who acted in the acquisition or disposal.

(3) Information required to be disclosed under this section need only be disclosed to the extent to which it is known to the person required to make the disclosure.

*Acquisitions and disposals of trust Property by trustee Corporations*

**707.**—(1) The Reserve Bank may require a trustee Corporation to disclose to it, in relation to an acquisition or disposal of trust Property by the trustee Corporation, all or any of the following—

- (a) the name of—
  - (i) the person from or through whom the trust Property was acquired; or
  - (ii) the person to or through whom the trust Property was disposed;
- (b) whether the acquisition or disposal was effected on the instructions of another person, and the nature of any such instructions; and
- (c) the names of the beneficiaries of the trust.

(2) Information required to be disclosed under this section need only be disclosed to the extent to which it is known to the person required to make the disclosure.

*Exercise of certain powers in relation to Securities*

**708.**—(1) The Reserve Bank may require a Director or secretary of a Company to disclose to the Reserve Bank information of which he or she is aware and that—

- (a) may have affected a dealing that has taken place; or
- (b) may affect a dealing that may take place,

in Securities issued by the Company.

(2) The Reserve Bank may require a Director or Secretary of a trustee Corporation to disclose to the Reserve Bank information of which he or she is aware and that may have affected an acquisition or disposal of trust Property by the trustee Corporation.

(3) Information required to be disclosed under this section need only be disclosed to the extent to which it is known to the person required to make the disclosure.

*Disclosures to take place in private*

**709.**—(1) A disclosure to the Reserve Bank pursuant to a requirement made under this Division must take place in private and the Reserve Bank may give directions about who may be present during it, or during a part of it.

(2) A person must not be present during a disclosure unless he or she—

- (a) is a staff member approved by the Reserve Bank; or
- (b) is entitled to be present by virtue of—
  - (i) a direction under subsection (1); or
  - (ii) section 710(1).

*Lawyer of person making disclosure may attend*

**710.**—(1) The lawyer of a person making a disclosure to the Reserve Bank pursuant to a requirement made under this Division may be present during the disclosure and may, at such times during it as the representative of the Reserve Bank presiding at the meeting during which the disclosure is made determines, address the representatives of the Reserve Bank about the disclosure.

(2) If, in the presiding representative's opinion, a person is trying to obstruct the disclosure by exercising rights under subsection (1), the presiding representative may require the person to stop addressing the representatives of the Reserve Bank.

## PART 45—GENERAL

*Fees are payable to the Government*

**711.** The fees imposed under this Act are payable to the Government by payment to the Registrar unless otherwise specified.

*Lodgement of document without payment of fee*

**712.**—(1) A document required to be Lodged under this Act is not taken not to have been Lodged merely because of non-payment of a fee for the Prescribed Amount.

(2) If a fee is payable under this Act for a matter involving the doing of an act by the Minister or the Registrar, the Minister or the Registrar may refuse to do that act until the fee is paid.

*Regulation making power*

**713.**—(1) The Minister may make regulations and rules which are not inconsistent with the provisions of this Act prescribing—

- (a) whether a fee is payable upon Lodgement of a document required to be Lodged under this Act;
- (b) the amounts for fees and fines to be paid in accordance with this Act;
- (c) the Registration Fee to be paid in accordance with this Act;
- (d) the Forms to be used in accordance with this Act;
- (e) the maximum penalty attributable to a contravention of a provision of this Act;
- (f) the maximum imprisonment term for a contravention of a provision of this Act;
- (g) the duties or additional duties to be performed by the Registrar and Registrar for the purposes of this Act; and
- (h) the conduct of persons who must comply with this Act.

(2) Until otherwise prescribed by regulations made under this Act—

- (a) the prescribed amounts will be those amounts specified in Schedule 5;



- (b) the Maximum Penalty attributable to a contravention of a provision of this Act will be that Penalty specified for each provision in Schedule 6; and
- (c) the maximum imprisonment term for a contravention of a provision of this Act will be that term specified for each provision in Schedule 7.

*Registers*

**714.**—(1) The Registrar must, subject to this Act, keep such registers as it considers necessary in such form as it thinks fit.

(2) A person may—

- (a) inspect any document lodged with the Registrar, not being a document that has been destroyed or otherwise disposed of;
- (b) require a certificate of the registration of a Company or any other certificate authorised by this Act to be given by the Registrar; or
- (c) require a copy of or extract from any document that the person is entitled to inspect pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given, or given and certified, by the Registrar.

(3) A copy of or extract from any document Lodged with the Registrar, and certified by the Registrar, is, in any proceeding, admissible in evidence as of equal validity with the original document.

(4) In any proceeding—

- (a) a certificate by the Registrar that, at a date or during a period specified in the certificate, no Company was registered under this Act by a name specified in the certificate is to be received as *prima facie* evidence that at that date or during that period, as the case may be, no Company was registered by that name under this Act;
- (b) a certificate by the Registrar that a requirement of this Act specified in the certificate—
  - (i) had or had not been complied with at a date or within a period specified in the certificate; or
  - (ii) had been complied with at a date specified in the certificate but not before that date,

is to be received as *prima facie* evidence of matters specified in the certificate; and

- (c) a certificate by the Registrar that, during a period specified in the certificate, a particular Company was registered, or taken to be registered, under this Act is to be received as *prima facie* evidence that, during that period, that Company was registered under this Act.

(5) A certificate issued by the Registrar stating that a Company has been registered under this Act is conclusive evidence that—

- (a) all requirements of this Act for its registration have been complied with; and
- (b) the Company was duly registered as a Company under this Act on the date specified in the certificate.

(6) A certificate issued by the Registrar stating that a person was a Director or secretary of a Company at a particular time or during a particular period is *prima facie* evidence that, during the period, the person was a Director or secretary of the Company.

(7) If the Registrar is of the opinion that a document submitted for Lodgement—

- (a) contains matter contrary to law;
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
- (c) because of an omission or misdescription has not been duly completed;
- (d) contravenes this Act; or
- (e) contains an error, alteration or erasure,

the Registrar may refuse to register or receive the document and may request—

- (i) that the document be appropriately amended or completed and resubmitted;
- (ii) that a fresh document be submitted in its place; or
- (iii) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.

(8) The Registrar may require a person who submits a document for lodgement to produce to the Registrar such other document, or to give to the Registrar such information, as the Registrar thinks necessary in order to form an opinion whether it may refuse to receive or register the first mentioned document.

*Register of disqualified Company Directors and other Officers*

**715.**—(1) The Registrar must keep a register of persons who have been disqualified from acting as an Officer of a Company under this Act.

(2) The register must contain a copy of every order made by the Court or referred to in Part 13.

*Obtaining information from certain registers*

**716.**—(1) In this section—

“data processor” means a mechanical, electronic or other device for the processing of data;

“register” means a register kept by the Registrar under this Act; and

“search” includes inspect.

(2) The Registrar may permit a person to search, otherwise than by using a Data Processor, a Register.

(3) The Registrar may permit a person to search a Register by using a Data Processor in order to obtain information from the Register.

(4) The Registrar may make available to a person information (in the form of a document or otherwise) that the Registrar has obtained from a Register by using a Data Processor.

(5) Nothing in this section limits—

- (a) a power or function that the Registrar has apart from this section; or
- (b) a right that a person has apart from this section.

#### *Inspection of Books*

**717.**—(1) A Book that is by this Act required to be available for inspection must, subject to and in accordance with this Act, be available for inspection at the place where, in accordance with this Act, it is kept and at all times when the Registered Office in Fiji of the company or foreign company concerned is required to be open to the public.

(2) If any register kept by a company or a foreign company for the purposes of this Act is kept at a place other than the Registered Office of the company or foreign company, that place must be open to permit the register to be inspected during the same hours as those during which the Registered Office of the company or foreign company is required to be open to the public.

(3) If a person asks a Private Company in writing to inspect a particular Book of the Company that the person has a right to inspect, the Company must make it available within 7 days, for inspection by the person at the place where it is required to be kept.

#### *Location of registers*

**718.**—(1) A register that is required by section 81 to be kept by a Company must be kept at the Registered Office or at an office at the principal place of business in Fiji of the Company but—

- (a) if the work of making up the register is done at another office of the Company in Fiji, it may be kept at that other office;
- (b) if the Company arranges with some other person to make up the register on its behalf and the office of that other person at which the work is done is in Fiji, it may be kept at that office; or
- (c) if the Registrar approves, it may be kept at another office in Fiji, being an office of the Company or of another person.

(2) A Company must, within 7 days after any register of the Company to which subsection (1) applies is first kept at an office other than the Registered Office or the principal place of business in Fiji, as the case may be, Lodge a notice of the address of the office where the register is kept in the Prescribed Form and must, within 7 days after any change in the place at which the register is kept, Lodge notice of the change in the Prescribed Form.

*Court may compel compliance*

**719.** If any person in contravention of this Act refuses to permit the inspection of any Book or to supply a copy of any Book, the Court may by order compel an immediate inspection of the Book or order the copy to be supplied.

*Translations of instruments*

**720.**—(1) Where under this Act a person is required to Lodge an instrument or a certified copy of an instrument and the instrument is not written in English, the person must Lodge at the same time a certified translation of the instrument into English.

(2) Where under this Act a company or foreign company is required to make an instrument available for inspection and the instrument is not written in English, the Company or foreign company must keep at its Registered Office or, if it does not have a Registered Office, at its principal place of business in Fiji, a certified translation of the instrument into English.

(3) In this section, instrument includes any certificate, contract or other document.

*Admissibility of Books in evidence*

**721.**—(1) A Book kept by a Company or foreign company under a requirement of this Act is admissible in evidence in any proceeding and is *prima facie* evidence of any matter stated or recorded in the Book.

(2) A document purporting to be a Book kept by a company or foreign company is, unless the contrary is proved, taken to be a Book kept as mentioned in subsection (1).

*Form and evidentiary value of Books*

**722.**—(1) A Book that is required by this Act to be kept or prepared may be kept or prepared—

- (a) by making entries in a bound or loose leaf Book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
- (c) in any other manner approved by the Registrar.

(2) Subsection (1) does not authorise a Book to be kept or prepared by a mechanical, electronic or other device unless—

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
- (b) a reproduction of those matters is kept in a written form approved by the Registrar.

(3) A company or foreign company must take all reasonable precautions, including such precautions (if any) as are prescribed by regulations made under this Act, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any Book or part of a Book required by this Act to be kept or prepared by the company or foreign company.

(4) Where a company or foreign company records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a Book containing those matters available for inspection or to provide copies of the whole or a part of a Book containing those matters is to be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) If—

- (a) because of this Act, a Book that this Act requires to be kept or prepared is *prima facie* evidence of a matter; and
- (b) the Book, or a part of the Book, is kept or prepared by recording or storing matters (including that matter) by means of a mechanical, electronic or other device,

a written reproduction of that matter as so recorded or stored is *prima facie* evidence of that matter.

(6) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, taken to be a reproduction of that matter.

#### *Falsification of Books*

**723.** Each Officer, former Officer, employee, former employee, member or former member of a Company who engages in conduct that results in the concealment, destruction, mutilation or falsification of any documents relating to Securities of or belonging to the Company or any Books affecting or relating to Affairs of the Company is guilty of an offence.

### PART 46—TRANSITIONAL PROVISIONS

#### *Registration of Existing Companies*

**724.—**(1) An Existing Company will be deemed to have been registered under this Act—

- (a) in the case of a private company, as if the company had been formed and registered under this Act as a Private Company;
- (b) in the case of a company limited by shares, other than a private company, as if the company had been formed and registered under this Act as a Public Company;
- (c) in the case of an unlimited company, as if the company had been formed and registered under this Act as an Unlimited Liability Company;

- (d) in the case of a company limited by guarantee, as if the Company had been formed and registered under this Act as a Company Limited by Guarantee;
- (e) in the case of a company limited by guarantee having share capital, as if the Company had been formed and registered under this Act as a Company Limited by Shares and Guarantee; and
- (f) in the case of a foreign company, as if the Company had been registered under this Act as a foreign Company.

(2) A certificate of incorporation or certificate of registration issued under a Repealed Act or any predecessor of a Repealed Act stating that the company was registered as a company or foreign company respectively under a Repealed Act is conclusive evidence that—

- (a) all the requirements necessary for the registration under that legislation have been complied with;
- (b) all matters related to the registration under that legislation have been complied with; and
- (c) was duly registered under that legislation and in respect of a company was taken to be a company duly incorporated under that legislation on the date (if any) specified in the certificate.

*Application of Act to companies formed and registered under the Repealed Acts*

**725.** This Act applies to Existing Companies—

- (a) in the case of a private company, as if the company had been formed and registered under this Act as a Private Company;
- (b) in the case of a company limited by shares, other than a private company, as if the company had been formed and registered under this Act as a Public Company;
- (c) in the case of an unlimited company, as if the company had been formed and registered under this Act as a Unlimited Liability Company;
- (d) in the case of a company limited by guarantee, as if the Company had been formed and registered under this Act as a Company Limited by Guarantee;
- (e) in the case of a company limited by guarantee having share capital, as if the Company had been formed and registered under this Act as a Company Limited by Shares and Guarantee; and
- (f) in the case of a foreign company, as if the company had been registered under this Act as a foreign company,

provided that any reference, express or implied, to the date of registration must be construed as a reference to the date at which the Company was registered under the Repealed Acts or any predecessor of a Repealed Act under which such Company was registered.

*Continuation of company names*

**726.**—(1) The name of an existing company immediately before the commencement date which was registered under a Repealed Act is taken to be a Company or foreign company's company name after the commencement date.

(2) An Existing Company which is deemed to be a Private Company under this Act, must comply with section 26(1)(b) within 3 years of the commencement date but is not required to change its company name with the Registrar.

*Continuation of business names*

**727.** A business name registered under a Repealed Act immediately before the commencement date is taken to be a Business Name.

*Memorandum and articles of association of Existing Company*

**728.**—(1) The provisions that formed part of an Existing Company's Memorandum of Association and Articles of Association are taken on the commencement date to form part of the Existing Company's Articles of Association, except those provisions that provide for the issue of, or refer to, Bearer Shares, Bearer Stock or Share Warrants in an Existing Company which are null and void as at the commencement date.

(2) For the avoidance of doubt, where an Existing Company adopted—

- (a) the incidental and ancillary powers in the First Schedule of the Companies Act (Cap. 247); and/or
- (b) the Table A Form articles of association in the Second Schedule of the Companies Act (Cap. 247); and/or
- (c) the standard form memorandum of association or articles of association contained in one of the Repealed Acts,

as its articles of association, those articles of association are taken on the commencement date to form part of the Existing Company's Articles of Association, except those provisions that provide for the issue of, or refer to, Bearer Shares, Bearer Stock or Share Warrants in an Existing Company which are null and void as at the commencement date.

*Registered office of Existing Company*

**729.** The registered office of an Existing Company immediately before the commencement date continues to be the Company's Registered Office after the commencement date.

*Officers and members of Existing Company*

**730.** The officers and shareholders of an existing company immediately before commencement date continue to be Officers and members of the company after the commencement date.

*Annual general meetings held prior to commencement date*

**731.** An annual general meeting in accordance with a Repealed Act prior to the commencement date can be taken into account in determining compliance with the provisions of this Act.

*Meetings called prior to commencement date*

**732.** A meeting called in accordance with a Repealed Act prior to the commencement date is taken to be a meeting called in accordance with the provisions of this Act.

*Par Value*

**733.—**(1) The Par Value of all share in an Existing Company immediately prior to the commencement date is taken to be a reference to the aggregate value of the company's share capital immediately before the commencement date.

(2) This section applies where a contract refers to the Par Value of shares in an Existing Company.

*No Bearer Shares, Bearer Stock or Share Warrants*

**734.—**(1) A bearer of a Bearer Share, Bearer Stock or Share Warrant in an Existing Company may surrender the Bearer Share, Bearer Stock or Share Warrant to the Existing Company within one year of the commencement date at which time the Existing Company must —

- (a) cancel the Bearer Share, Bearer Stock or Share Warrant;
- (b) issue the bearer with an equivalent number of shares in the Existing Company; and
- (c) include the bearer's name in the Existing Company's register of members.

(2) The Existing Company is not liable to compensate anyone who suffers a loss because a Bearer Share, Bearer Stock or Share Warrant was not surrendered to the Existing Company within one year of the commencement date in accordance with subsection (1).

(3) The Existing Company is not liable to compensate anyone who suffers a loss because the Existing Company includes the bearer's name in the Existing Company's register of members despite the fact that the Bearer Share, Bearer Stock or Share Warrant was not surrendered to the Existing Company within one year of the commencement date.

*Authorised Share Capital*

**735.** References in an Existing Company's memorandum of association or articles of association or a contract to the Authorised Share Capital of an Existing Company together with any amount referred to in section 736 is taken to be a reference to current total share capital on issue in the Existing Company immediately before the commencement date.

*Stock*

**736.—**(1) References in an Existing Company's memorandum of association or articles of association or a contract to the stock of an Existing Company is taken to be a reference to Shares on issue in the Existing Company immediately before the commencement date.

(2) A holder of stock in an Existing Company immediately before the commencement date will be the holder of a number of Shares on and from the commencement date whose aggregate value is equivalent to the aggregate value of the stock held by the holder in the Existing Company immediately before the commencement date.



*Transfer of Share Premium Account and Capital Redemption Reserve Fund*

**737.** Immediately after the commencement date, any amount standing to the credit of an Existing Company's Share Premium Account and Capital Redemption Reserve Fund becomes part of the Existing Company's total issued share capital.

*Use of amount standing to credit of Share Premium Account*

**738.—**(1) An Existing Company may only use the amount standing to the credit of its Share Premium Account immediately before the commencement date to—

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before the commencement date; or
- (b) write off—
  - (i) the preliminary expenses of the Existing Company incurred before the commencement date; or
  - (ii) expenses incurred, payments made, or discounts allowed, on or before the commencement date, in respect of any issue of shares in, or debentures of, the Existing Company.

*Calls on partly-paid shares before commencement date*

**739.** A call made on partly-paid shares in an Existing Company made before the commencement date in accordance with a Repealed Act is taken to be made in accordance with the provisions of this Act.

*Capital reductions and buy-backs initiated before commencement date*

**740.** If a capital reduction in relation to an Existing Company is initiated before the commencement date in accordance with a Repealed Act, it is taken to be initiated in accordance with the provisions of this Act provided it is completed within one year after the commencement date.

*Financial reporting*

**741.—**(1) Where the current Financial Year of an Existing Company as at the commencement date ends within one year of the commencement date, a financial report prepared in accordance with a repealed Act is taken to comply with the provisions of this Act.

(2) For all subsequent financial years, an Existing Company must comply with the provisions of this Act.

(3) The Financial Records of Existing Companies must be retained for 7 years after the transactions covered by the records are completed.

*Notification of changes*

**742.—**(1) Where a Company or foreign company is required under this Act to notify the Registrar of any matter, the Company or foreign company is only required to notify the Registrar of those matters which occur after the commencement date.

(2) Where a company or foreign company was required to notify the Registrar of any matter under a Repealed Act and that obligation was not complied with before the repeal of the Repealed Act, the Company or foreign company must comply with that requirement within the time period prescribed by the Repealed Act notwithstanding the repeal of the Repealed Act.

(3) Where an Auditor, liquidator, Receiver or Manager (in this section called the “relevant person”) is required under this Act to notify the Ministry of Justice or the Registrar of any matter, the relevant person is only required to notify the Ministry of Justice or the Registrar of those matters which occur after the commencement date.

(4) Where a relevant person was required under a Repealed Act to notify the Ministry of Justice or the Registrar of any matter and that obligation was not complied with before the repeal of the Repealed Act, the relevant person must comply with that requirement within the time period prescribed by the Repealed Act notwithstanding the repeal of the Repealed Act.

*Application of Managed Investment Scheme provisions to existing unit trusts*

**743.**—(1) The provisions of this Act in relation to Managed Investment Schemes apply to unit trusts established under the Unit Trusts Act (Cap. 228) as at the commencement date.

(2) The provisions of this Act in relation to Managed Investment Schemes do not apply to Time Sharing Schemes in existence immediately before the commencement date until 2 years after the commencement date.

*Debentures*

**744.** Debentures issued under a Repealed Act are taken to be Debentures lawfully issued under this Act.

*Charges*

**745.**—(1) Charges on the Property of an Existing Company, which were registered under a Repealed Act and have not been satisfied or released immediately before the commencement date, are taken to be registered Charges under this Act and the provisions of this Act in relation to registered Charges apply with effect from the commencement date.

(2) Charges on the Property of an Existing Company, which were not registered under a Repealed Act and have not been satisfied or released immediately before the commencement date, are taken to be unregistered Charges under this Act and the provisions of this Act in relation to unregistered Charges apply with effect from the commencement date.

(3) Charges on the Property of an Existing Company, which were not registered under a Repealed Act and have not been satisfied or released immediately before the commencement date, but are registered under this Act within the time period prescribed

by the Repealed Act for registration, are taken to be registered Charges under this Act and the provisions of this Act in relation to registered Charges apply with effect from the commencement date.

*Current prospectuses*

**746.** All prospectuses which have been issued before the commencement date are taken to have complied with the provisions of this Act provided the offers made under the prospectuses close within 3 months after the commencement date.

*Licensing*

**747.—**(1) Persons who hold current licences or registrations under a Repealed Act to perform certain functions immediately before the commencement date are taken to retain valid licences and registrations, and comply with the provisions requiring a person to obtain an equivalent licence or registration under this Act until—

- (a) their expiry date;
- (b) if there is no expiry date – for 6 months after the commencement date; or
- (c) in the case of a licence granted to an Existing Company which is a company limited by guarantee – for 2 years after the commencement date.

(2) For the avoidance of doubt, the persons referred to in this section must comply with this Act in all other respects from commencement date.

(3) After that time, the persons referred to in this section must obtain an equivalent licence or registration under this Act.

*Continued appointment of Auditor, liquidator, Receiver or Manager*

**748.—**(1) A person who is validly appointed as an Auditor, liquidator, Receiver or Manager under a Repealed Act (in this section called a “relevant person”) is deemed to be validly appointed under this Act for a period of one year commencing on the commencement date (in this section called the “transition period”).

(2) Following the end of the transition period, any relevant person must be appointed and, if applicable, registered in their respective roles under this Act.

(3) To the extent that this Act does not conflict with the terms of appointment of a relevant person (other than as set out under a Repealed Act), the relevant person must comply with the provisions of this Act so far as they apply to their respective roles.

(4) Subject to this section, the appointment of a relevant person under a Repealed Act continues under this Act until such time as their appointment ends in accordance with this Act.

*Winding up*

**749.** If an Existing Company which is in the process of being wound up at the commencement date, is wound up in accordance with a Repealed Act within one year after the commencement date, the provisions of this Act are taken to have been complied with.

*Court proceedings*

**750.**—(1) If a proceeding in relation to a provision of a repealed Act has not concluded or terminated before the commencement date, the proceeding remains on foot until concluded or terminated.

(2) If a proceeding in relation to a provision of a Repealed Act has concluded or terminated before the commencement date, a decision or order in that proceeding may be appealed against, or otherwise reviewed, as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

(3) The following persons may lay or make any, charge, complaint or application in proceedings relating to a contravention of a Repealed Act within 5 years of the commencement date—

- (a) the Registrar;
- (b) the Attorney-General;
- (c) the Director of Public Prosecutions; or
- (d) another person authorised in writing by the Minister to institute the proceedings.

*Fees and forms*

**751.** If—

- (a) a person is required to pay a fee or lodge a form under a Repealed Act;
- (b) a person is required to pay a fee or lodge a form under this Act in relation to the same matter; and
- (c) the fee to be paid or form to be lodged under a Repealed Act was paid or lodged before the commencement date,

the person is taken to have complied with the provisions of this Act.

*Repeal of existing laws*

**752.** The following laws are repealed—

- (a) Companies Act (Cap. 247);
- (b) Capital Markets Decree 2009;
- (c) Unit Trusts Act (Cap. 228); and
- (d) Registration of Business Names Act (Cap. 249).

SCHEDULE 1  
(Sections 25(c) and 33)

AVAILABILITY OF COMPANY NAMES

*Comparing Company names*

1. In comparing one name with another, the following matters are to be disregarded—
  - (a) the use of the definite or indefinite article as the first word in one or both of those names;
  - (b) the use of “Pte”, “Limited”, “Ltd” in one or both of the names;
  - (c) whether a word is in the plural or singular number in one or both names;
  - (d) the type, size and case of letters, the size of any numbers or other characters, and any accents, spaces between letters, numbers or characters, and punctuation marks, used in one or both names; and
  - (e) the fact that one name contains a word or expression in Column 2 of the following table and the other name contains an alternative for that word or expression in Column 3—

Column 1 Item	Column 2 Word or expression	Column 3 Alternative
1	Fiji	Fiji Islands
2	Fiji Islands	Fiji
3	Company	Co <i>or</i> Coy
4	Co	Company <i>or</i> Coy
5	Coy	Company <i>or</i> Co
6	Number	No
7	and	&
8	Incorporated	Inc

*Names unacceptable for registration*

2. A name is unacceptable for registration if the name—
  - (a) in the opinion of the Registrar, is undesirable, or likely to be offensive to—
    - (i) members of the public; or
    - (ii) members of any section of the public;
  - (b) in the opinion of the Registrar, is misleading and deceptive or likely to mislead or deceive—
    - (i) members of the public; or
    - (ii) members of any section of the public; or

(c) unless the name is the name of a foreign company or a company limited by Guarantee which is granted a licence to use the following as its company name without the word “Limited”—

- (i) contains a word or phrase specified in Column 2 of the following table, or an abbreviation of that word or phrase; or

Column 1 Item	Column 2 Word or phrase
1	bank
2	banker
	bankers
	banking
3	Chamber of Commerce
4	Chamber of Manufactures
5	Chartered
6	Commonwealth
7	Consumer
8	Co operative
9	corporation
10	Executor
11	Fiji Islands
12	Fijian
13	foreign
14	Guarantee
15	Incorporated
16	international
17	investment trust
18	Made in Fiji
19	Made in the Fiji Islands
20	Made in the Republic of Fiji
21	Made in the Republic of Fiji Islands
22	national
23	police
24	policing
25	Republic of Fiji
26	Republic of Fiji Islands
27	Stock Exchange
28	trust

- (ii) a word or phrase or an abbreviation having the same or a similar meaning;
    - (iii) includes the word “Fiji” in any part of the name other than in brackets at the end of the company name; or
    - (iv) unless the Registrar is satisfied that the word is used in a geographic context, includes the word “Republic”;
  - (d) consists wholly or partially of initials;
  - (e) includes a word which is the first name or surname, unless the Company is controlled by a person of that name;
  - (f) in the context in which it is proposed to be used, suggests a connection with—
    - (i) the Government;
    - (ii) a municipal or other local authority;
    - (iii) a ministry, department, authority or instrumentality of the Government; or
    - (iv) the government of a foreign country; and
  - (g) if that connection referred to in paragraph (f) does not exist—
    - (i) in the context in which it is proposed to be used, suggests a connection with an ex-servicemen’s organisation and that connection does not exist; or
    - (ii) in the context in which it is proposed to be used, suggests that the members of an organisation are totally or partially incapacitated if those members are not so affected.
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SCHEDULE 2  
(Section 3)

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STANDARD FORM ARTICLES OF ASSOCIATION

PART 1—INTERPRETATION

*Defined terms*

1.—(1) In this Articles of Association—

“Alternate Director” means a person appointed as an alternate director under clause 13;

“Articles of Association” means these Articles of Association;

“Companies Act” means the Companies Act 2015;

“Company” means the Company which has adopted these Articles of Association;

“Director” includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director;

“Directors” means all or some of the Directors acting as a board;

“member” means a person whose name is entered for the time being on the Register or any branch register as the holder of one or more Shares; and

“Shares” means shares of the Company.

(2) In this Articles of Association, except where the context otherwise requires, an expression in a clause of this Articles of Association has the same meaning as in the Companies Act.

(3) Where the expression has more than one meaning in the Companies Act and a provision of the Companies Act deals with the same matter as a clause of this Articles of Association, that expression has the same meaning as in that provision.

*Interpretation*

2.—(1) In this Articles of Association, except where the context otherwise requires—

(a) the singular includes the plural and vice versa, and a gender includes other genders;

(b) another grammatical form of a defined word or expression has a corresponding meaning;

(c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Articles of Association, and a reference to this Articles of Association includes any schedule or annexure;



- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (e) a reference to FJ\$, \$FJ, dollar or \$ is to Fiji currency;
  - (f) a reference to a section number is a reference to the corresponding section of the Companies Act; and
  - (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.
- (2) Headings are for ease of reference only and do not affect interpretation.
- (3) If the Company is a Company Limited by Shares, Part 19 and Part 20 do not apply.
- (4) If the Company is a Company Limited by Guarantee—
- (a) clauses relating to Shares and Part 20 do not apply; and
  - (b) Part 19 applies.
- (5) If the Company is a Company Limited by Shares and Guarantee—
- (a) Part 20 does not apply; and
  - (b) clauses relating to Shares and Part 20 apply to the extent that they are applicable.
- (6) If the Company is an Unlimited Liability Company—
- (a) Part 19 does not apply;
  - (b) clauses relating to Shares apply to the extent that the Company has Shares; and
  - (c) Part 20 applies.

## PART 2—OFFICERS AND EMPLOYEES

### *Powers of Directors*

3.—(1) The business of a Company is to be managed by or under the direction of the Directors.

(2) The Directors may exercise all the powers of the Company except any powers that this Act or the Company's Articles of Association require the Company to exercise in General Meeting.

### *Negotiable instruments*

4.—(1) Any two Directors of a company that has two or more Directors, or the director of a Private Company that has only one Director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

(2) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

*Managing Director*

5.—(1) The Directors may appoint a Director to the office of managing Director or any other office (other than Auditor) or employment under the Company for any period (but not for life) and on any terms as they think fit.

(2) The Directors of a Company may confer on a managing director any of the powers that the Directors can exercise.

(3) The Directors may revoke or vary a conferral of powers on the managing Director.

*Remuneration of Directors*

6.—(1) The Directors of a Company are to be paid the remuneration that the members of the Company determine by resolution.

(2) The members of the Company may also pay the Directors' travelling and other expenses that they properly incur—

(a) in attending Directors' meetings or any meetings of committees of Directors;

(b) in attending any General Meetings of the Company; and

(c) in connection with the Company's business.

*Director may resign by giving written notice to Company*

7. A Director of a Company may resign as a Director of the Company by giving a written notice of resignation to the Company at its Registered Office.

*Termination of appointment of managing director*

8.—(1) A person ceases to be managing director if they cease to be a Director.

(2) The Directors may revoke or vary an appointment of a managing director.

**PART 3—APPOINTMENT AND REMOVAL OF DIRECTORS***Appointment and removal of Directors*

9. The initial Directors of the Company are the persons who have consented to act as Directors and are set out in the Company's application for registration as a company. Those persons hold office subject to this Articles of Association.

*Company may appoint a Director*

10. A Company may appoint a person as a Director by resolution passed in General Meeting.

*Directors may appoint other Directors*

11.—(1) The Directors of a Company may appoint a person as a Director.

(2) A person can be appointed as a Director in order to make up a quorum for a Directors' meeting even if the total number of Directors of the Company is not enough to make up that quorum.

(3) If a person is appointed under this section as a Director of a Private Company, the Company must confirm the appointment by resolution within 2 months after the appointment is made.

(4) If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of those 2 months.

(5) If a person is appointed by the other Directors as a Director of a Public Company, the Company must confirm the appointment by resolution at the Company's next AGM.

(6) If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the AGM.

*Appointment of managing directors*

12. The Directors of a Company may appoint one or more of themselves to the office of managing director of the Company for the period, and on the terms (including as to remuneration), as the Directors see fit.

*Alternate directors*

13.—(1) With the other Directors' approval, a Director may appoint an Alternate Director to exercise some or all of the Director's powers for a specified period.

(2) If the appointing Director requests the Company to give the Alternate Director notice of Directors' meetings, the Company must do so.

(3) An Alternate Director is an Officer of the Company and is not an agent of the appointor.

(4) When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.

(5) The provisions of this Articles of Association which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled to any remuneration from the Company.

(6) The appointing Director may terminate the Alternate Director's appointment at any time.

(7) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.

(8) An appointment or its termination must be in writing and a copy must be given to the Company.

*Removal by members*

14.—(1) A Company may by resolution remove a Director from office despite anything in—

- (a) the Company's Articles of Association;
- (b) an agreement between the Company and the Director; or
- (c) an agreement between any or all members of the Company and the Director.

(2) If the Director was appointed to represent the interests of particular members or Debenture Holders, the resolution to remove the Director does not take effect until a replacement to represent their interests has been appointed.

(3) Notice of intention to move the resolution must be given to the Company at least 2 months before the meeting is to be held. However, if the Company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

(4) The Company must give the Director a copy of the notice as soon as practicable after it is received.

(5) The Director is entitled to put their case to members by—

- (a) giving the Company a written statement for circulation to members; and
- (b) speaking to the motion at the meeting (whether or not the Director is a member of the Company).

(6) The written statement is to be circulated by the Company to members by—

- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
- (b) if there is not time to comply with paragraph (a) – having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.

(7) The Director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.

(8) If a person is appointed to replace a Director removed under this section, the time at which—

- (a) the replacement Director; or
- (b) any other Director,

is to retire, is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

#### PART 4—SECRETARY

##### *Terms and conditions of office for secretaries*

15.—(1) If required by the Companies Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

(2) The Secretary (if any) is entitled to attend and be heard on any matter at all Directors' and general meetings.

(3) The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## PART 5—DIRECTORS' MEETINGS

### *Calling Directors' meetings*

16. A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

### *Quorum at Directors' meetings*

17.—(1) Unless the Directors determine otherwise, the quorum for a Directors' meeting is two Directors, unless the Company has only one Director, when the quorum is that Director.

(2) The quorum must be present at all times during the meeting.

### *Decision on questions*

18.—(1) Subject to this Articles of Association and the Companies Act, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting, each Director has one vote.

(2) The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote if there is an equality of votes.

(3) An Alternate Director has one vote for each Director for whom he or she is an alternate. If the Alternate Director is a Director, he or she also has a vote as a Director.

### *Passing of Directors' resolutions*

19. A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

### *Circulating resolutions of Companies with more than one Director*

20.—(1) The Directors of a Company may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(2) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

(3) The resolution is passed when the last Director signs.

(4) If the Company has one Director, the Director may pass a resolution or make a declaration by recording it and signing the record.

## PART 6—POWERS AND DUTIES OF DIRECTORS

### *Directors to manage Company*

21.—(1) The business of the Company is managed by the Directors who may exercise all powers of the Company that this Articles of Association or the Companies Act do not require to be exercised by the Company in General Meeting.

(2) Without limiting the generality of sub-clause (3), the Directors may exercise all the powers of the Company to—

(a) borrow money;

- (b) Charge any Property or business of the Company or all or any of its uncalled capital;
- (c) issue Debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

(3) Each Director is authorised to act in the best interests of any Holding Company of the Company, including its Ultimate Holding Company.

(4) This clause does not in any way operate, nor may be construed, so as to restrict or limit a Director from acting in a manner which, irrespective of this clause, is in accordance with the Companies Act and the general law (including the law relating to Directors' fiduciary duties).

## PART 7—MEETINGS OF MEMBERS

### *Calling of meetings of members by a Director*

22. A Director may call a meeting of the Company's members whether the Company is a Private or Public Company, Listed or not Listed.

### *Notice of adjourned meetings*

23. When a meeting is adjourned, a new notice of the resumed meeting must be given if the meeting is adjourned for 28 days or more.

### *Adjourned meetings*

24. Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### *Quorum*

25.—(1) The quorum for a meeting of a Company's members is two members and the quorum must be present at all times during the meeting.

(2) In determining whether a quorum is present, count individuals attending as proxies or Company representatives. However—

- (a) if a member has appointed more than one proxy or representative, count only one of them; and
- (b) if an individual is attending both as a member and as a proxy or Company representative, count them only once.

(3) A meeting of the Company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify one or more of those things, the meeting is adjourned to—

- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time; and

(c) if the place is not specified – the same place.

(4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

*Chairing meetings of Members*

26.—(1) The Directors may elect an individual to chair meetings of the Company's members.

(2) The Directors at a meeting of the Company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the Directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).

(3) The members at a meeting of the Company's members must elect a member present to chair the meeting (or part of it) if—

- (a) a chair has not previously been elected by the Directors to chair the meeting; or
- (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

(4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

*Adjournment*

27.—(1) The chairperson of a General Meeting at which a quorum is present—

- (a) in his or her discretion may adjourn the meeting with the meeting's consent; and
- (b) must adjourn the meeting if the meeting directs him or her to do so.

(2) An adjourned General Meeting may take place at a different venue to the initial General Meeting.

(3) The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.

(4) If a General Meeting has been adjourned for more than 21 days, at least 3 days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to members.

## PART 8—VOTES OF MEMBERS

*Entitlement to vote*

28.—(1) Subject to this Articles of Association and to any rights or restrictions attaching to any class of Shares—

- (a) every member may vote;

- (b) subject to clause paragraph (c), on a show of hands every member has one vote; and
- (c) on a poll every member has—
  - (i) one vote for each fully paid Share; and
  - (ii) voting rights pro rata to the issue price of a Share on each partly paid Share held by the Member.

(2) If a member is of unsound mind or is a person whose estate or Property has had a personal representative, trustee or other person appointed to administer it, the member's personal representative, trustee or other person with the management of the member's estate or Property may exercise any rights of the member in relation to a meeting of members as if the personal representative, trustee or other person was a member.

*Unpaid calls*

29. A member is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the member in respect of Shares have been paid.

## PART 9—WRITTEN RESOLUTIONS

*Circulating resolutions of Private Companies with more than one Member*

30.—(1) This section applies to resolutions of the members of Private Companies that the Companies Act or the Company's Articles of Association requires or permits to be passed at a General Meeting. It does not apply to a resolution under section 427 to remove an Auditor.

(2) A Company may pass a resolution without a General Meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Each member of a joint membership must sign.

(3) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

(4) The resolution is passed when the last Member signs.

(5) A Company that passes a resolution under this section without holding a meeting satisfies any requirement in this Act—

- (a) to give members information or a document relating to the resolution – by giving members that information or document with the document to be signed;
- (b) to Lodge with the Registrar a copy of a notice of meeting to consider the resolution – by lodging a copy of the document to be signed by Members; and
- (c) to Lodge a copy of a document that accompanies a notice of meeting to consider the resolution – by lodging a copy of the information or documents referred to in paragraph (a).



(6) The passage of the resolution satisfies any requirement in the Companies Act or this Articles of Association, that the resolution be passed at a General Meeting.

## PART 10—SHARES

### *Rights*

31. Subject to this Articles of Association and to the terms of issue of Shares, all Shares attract the following rights, privileges and conditions—

- (a) the right to receive notice of and to attend and vote at all General Meetings of the Company at one vote per Share;
- (b) the right to receive dividends;
- (c) in a winding up, the right to participate equally in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Share.

### *Issue of Shares and other Securities*

32.—(1) Subject to this Articles of Association and the Companies Act, the Directors may issue or dispose of Securities to persons—

- (a) on terms determined by the Directors;
- (b) at the issue price that the Directors determine; and
- (c) at the time that the Directors determine.

(2) The Directors' power under sub-clause (1) includes the power to—

- (a) grant options to have other Securities issued; and
- (b) issue other Securities with—
  - (i) any preferential, deferred or special rights, privileges or conditions;
  - (ii) any restrictions in regard to dividend, voting, return of capital or otherwise; or
  - (iii) issue preference Shares or other Securities that are liable to be redeemed.

(3) The Company must not make an offer to the public of Shares.

(4) The number of members in the Company must be limited to 50, not including persons who are in the employment of the Company and persons who, having been formerly in the employment of the Company, were, while in that employment and have continued, after the determination of that employment, to be, members of the Company.

### *Capital reductions and Buy-Backs*

33. Subject to the Companies Act, the Company may undertake a capital reduction or a Buy-Back on terms and at times determined by the Directors in their discretion.

*Commission and brokerage*

34. Any brokerage or commission which may be paid by the Company may be made in cash, by the issue of Shares, by the grant of options over Shares, or by a combination of any of those methods or otherwise.

*Trusts not recognised*

35.—(1) Except as required by law or as otherwise provided by this Articles of Association, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.

(2) Subject to the other clauses, this clause applies even if the Company has notice of the relevant trust, interest or right.

*Right to Share certificate*

36.—(1) Subject to the Companies Act and the conditions of issue of any Shares or any class of Shares—

- (a) every member is entitled free of charge to one certificate for all Shares registered in its name; and
- (b) a member may request several certificates in reasonable denominations for different portions of its holding.

(2) Subject to the Companies Act and the conditions of issue of any Shares or any class of Shares, joint holders are entitled to a single certificate in their joint names in respect of each portion of their holding. The certificate will be sent to the member whose name appears first in the Register.

(3) Subject to the Companies Act, the Company must issue a replacement certificate for Shares in accordance with the Companies Act if—

- (a) the holder of the Shares is entitled to a certificate for those Shares;
- (b) satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, Charged, sold or otherwise disposed of; and
- (c) the member has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the member.

(4) Every certificate for Shares must be issued and despatched in accordance with the Companies Act.

*Replacement of certificate*

37. The Directors may order worn out or defaced certificates to be cancelled and replaced by new certificates.

## PART 11—DIVIDENDS

*Payment of dividends*

38.—(1) Provided that the Company is Solvent, the Directors may, out of the profits of the Company—

- (a) declare that the Company pay interim or final dividends; or
- (b) determine that dividends are payable by the Company and fix the amount and time for and method of payment.

(2) Subject to the Companies Act, if the Directors determine that a dividend is payable under sub-clause (1)(b), they may amend or revoke the resolution to pay the dividend at any time before the date fixed for payment.

*Other provisions about paying dividends*

39.—(1) Provided that the Company is Solvent, the Directors may determine that a dividend is payable and fix—

- (a) the amount; and
- (b) the time for payment; and
- (c) the method of payment including the payment of cash, the issue of Shares, the grant of options and the transfer of assets.

(2) Interest is not payable on a dividend.

*Dividend rights*

40. Subject to the terms on which Shares in a Private Company are on issue, the Directors may pay dividends as they see fit.

*Interest*

41. The Company must not pay interest on a dividend.

*Reserves*

42.—(1) The Directors may set aside out of profits an amount by way of reserves as they think appropriate to pay a dividend.

(2) The Directors may apply the reserves for any purpose for which profits may be properly applied.

(3) Pending any such application, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.

(4) The Directors may carry forward any undistributed profits without transferring them to a reserve.

*Dividend entitlement*

43.—(1) Subject to the rights of persons (if any) entitled to Shares with special rights as to dividend, any dividend must be paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid.

(2) All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but if a Share is issued on terms providing that it will rank for dividend as from a particular date, that Share ranks for dividend accordingly.

(3) An amount paid or credited as paid on a Share in advance of a call is not to be taken as paid or credited as paid for the purposes of sub-clause (1) and (2).

(4) A transfer of Shares does not pass the right to any dividend declared or determined to be payable in respect of those Shares before the registration of a transfer.

*Deductions from dividends*

44. The Directors may deduct from a dividend payable to a member all sums presently payable by the member to the company on account of calls or otherwise in relation to Shares in the Company.

*Distribution of assets*

45.—(1) The Directors may resolve that a dividend (interim or final) will be paid wholly or partly by the transfer or distribution of specific assets, including fully paid Shares in, or Debentures of, any other Company.

(2) If a difficulty arises in making a transfer or distribution of specific assets, the Directors may—

- (a) deal with the difficulty as they consider expedient;
- (b) fix the value of all or any part of the specific assets for the purposes of the distribution;
- (c) determine that cash will be paid to any members on the basis of the fixed value in order to adjust the rights of all the members; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

(3) If a transfer or distribution of specific assets to a particular member or members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the member or on the basis of the cash amount of the dividend instead of the transfer or distribution of specific assets.

*Payment*

46.—(1) Any dividend or other money payable in respect of Shares may be paid by—

- (a) cheque sent through the mail directed to—
  - (i) the address of the member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
  - (ii) an address which the member or joint holders has in writing notified the Company as the address to which dividends should be sent;

- (b) electronic funds transfer to an account with a bank or other Financial Institution nominated by the member and acceptable to the Company; or
- (c) any other means determined by the Directors.

(2) Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

*Capitalisation of profits*

47.—(1) The Directors may resolve—

- (a) to capitalise profits and apply the sum capitalised; and
- (b) that the sum be applied, in any of the ways mentioned in sub-clause (2), for the benefit of members, or persons who have applied for Shares, in the proportions determined by the Directors.

(2) The ways in which a sum may be applied for the benefit of members under sub-clause (1) are—

- (a) in paying up any amounts unpaid on Shares held or to be held by members;
- (b) in paying up in full Shares or Debentures to be issued to members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(3) The Directors must do all things necessary to give effect to a resolution under sub-clause (1) and, in particular, to the extent necessary to adjust the rights of the members among themselves, may—

- (a) issue fractional certificates or make cash payments in cases where Shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all the members entitled to a benefit on the capitalisation, an agreement with the Company providing for—
  - (i) the issue to them, credited as fully paid up, of any such further Shares or Debentures; or
  - (ii) the payment by the Company on their behalf of the amount or any part of the amount remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under the authority of paragraph (b) is effective and binding on all the members concerned.

## PART 12—CALLS

*Calls*

48.—(1) Subject to the Companies Act and the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.

(2) A call is made when the resolution of the Directors authorising it is passed.

(3) The Directors may require it to be paid by instalments.

(4) The Directors may revoke or postpone a call before its due date for payment.

(5) At least 10 Business Days before the due date for payment of a call, the Company must send to members on whom the call is made a notice specifying—

(a) the amount of the call;

(b) the due date for payment; and

(c) the place for payment.

(6) A member to whom notice of a call is given in accordance with this clause must pay to the Company the amount called in accordance with the notice.

(7) Failure to send a notice of a call to any member or the non-receipt of a notice by any member does not invalidate the call.

(8) Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

*Instalments*

49. If—

(a) the Directors require a call to be paid by instalments; or

(b) an amount becomes payable by the terms of issue of Shares, or at a time or in circumstances specified in the terms of issue,

then—

(i) every instalment or the amount payable under the terms of issue of Shares is payable as if it were a call made by the Directors and as if they had given notice of it; and

(ii) the consequences of late payment or non-payment of an instalment or the amount payable under the terms of issue of Shares are the same as the consequences of late payment or non-payment of a call.

*Interest and expenses on calls*

50. If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay—

(a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and

- (b) all expenses incurred by the Company as a consequence of the non-payment,

but the Directors may waive payment of the interest and expenses in whole or in part.

*Recovery of amounts due*

51. On the hearing of any action for the recovery of money due for any call, proof that—

- (a) the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;
- (b) the resolution making the call is duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued,

will be conclusive evidence of the debt.

*Differentiation*

52. 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.

*Payment of calls in advance*

53. The Directors may accept from a member the whole or part of the amount unpaid on a Share before the amount accepted has been called.

### PART 13—LIEN AND FORFEITURE

*Lien*

54.—(1) The Company has a first and paramount lien on every partly paid Share for all money—

- (a) due and unpaid to the Company at a fixed time, in respect of the Share;
- (b) presently payable by the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
- (c) which the Company is required by law to pay in respect of the Share.

(2) The Company's lien extends to all dividends payable in respect of the Share.

(3) Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.

(4) The Directors may declare a Share to be wholly or partly exempt from a lien.

(5) If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to

make payment in respect of Shares or dividends or other moneys accruing or due to the member—

- (a) the member or, if the member is deceased, the member's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
- (b) subject to the Companies Act, the Company—
  - (i) has a lien on the Shares, dividends and other moneys payable in respect of the Shares, whether the Shares are held by the member solely or jointly with another person or by the person's legal personal representative, in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the member;
  - (ii) may set off amounts so paid by the Company against amounts payable by the Company to the member as dividends or otherwise; and
  - (iii) may recover as a debt due from the member or the member's legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in sub-clause (5)(b)(i).

*Lien sale*

55. If—

- (a) the Company has a lien on a Share for money presently payable;
- (b) the Company has given the member or the member's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
- (c) the member fails to pay all of the money demanded,

then 14 or more days after giving the notice, the Directors may sell the Share in any manner determined by them.

*Forfeiture notice*

56.—(1) The Directors may at any time after a call or instalment becomes payable and remains unpaid by a member, serve a notice on the member requiring the member to pay all or any of the following—

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all expenses incurred by the Company as a consequence of the non-payment.



(2) The notice under sub-clause (1) a must—

- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
- (b) state that if a member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

*Forfeiture*

57.—(1) If a member does not comply with a notice served under clause (56), then any or all of the Shares in respect of which the notice was given may be forfeited under a resolution of the Directors.

(2) Unpaid dividends in respect of forfeited Shares will also be forfeited.

(3) On forfeiture, Shares become the Property of the Company and forfeited Shares may be sold, disposed of, or cancelled on terms determined by the Directors.

(4) The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.

(5) Promptly after a Share has been forfeited—

- (a) notice of the forfeiture must be given to the member in whose name the Share was registered immediately before its forfeiture; and
- (b) the forfeiture and its date must be noted in the Register.

(6) Omission or neglect to give notice of or to note the forfeiture as specified in sub-clause (5) will not invalidate a forfeiture.

*Liability of former Member*

58.—(1) The interest of a person who held Shares which are forfeited is extinguished but the former member remains liable to pay—

- (a) all money (including interest and expenses) that was payable by the member to the Company at the date of forfeiture in respect of the forfeited Shares; and
- (b) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).

(2) A former members liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the former member in respect of the Shares.

*Disposal of Shares*

59.—(1) The Company may—

- (a) receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share, or a Share sold under a lien sale; and

- (b) execute a transfer of the Share in favour of a person to whom the Share is sold or disposed of.

(2) The purchaser of the Share—

- (a) is not bound to check the regularity of the sale or the application of the purchase price;
- (b) obtains title to the Share despite any irregularity in the sale; and
- (c) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.

(3) A statement signed by a Director and a secretary that the Share has been regularly forfeited and sold or re-issued, or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.

(4) The net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order—

- (a) in payment of the costs of the sale;
- (b) in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
- (c) in payment of any surplus to the former member whose Share was sold.

## PART14—TRANSFER OF SHARES

### *Transfer*

60.—(1) Subject to this Articles of Association, a member may transfer the Shares held by that member.

(2) Shares may be transferred by—

- (a) a written transfer instrument in any usual or common form; or
- (b) any other form approved by the Directors.

(3) A written transfer instrument referred to in sub-clause (2) must be executed by or on behalf of the transferor and the transferee.

(4) A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

(5) A transfer of Shares does not pass the right to any unpaid dividends or dividends declared on the Shares until such registration.

*Transfer procedure*

61.—(1) Subject to clause 63, the Directors are not required to register a transfer of Shares unless—

- (a) the transfer is left at the Company's Registered Office;
- (b) the transfer is accompanied by a certificate for the Shares dealt with in the transfer, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
- (c) the Directors have been provided with any further information they reasonably require to establish the right of the person transferring the Shares to make the transfer.

(2) Except where the issue of a certificate is to replace a lost or destroyed certificate, the Company must register all registrable transfer forms and issue certificates without charge if required to do so under the Companies Act.

*Registration of transfers*

62.—(1) A person transferring Shares remains the holder of the Shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the Shares.

(2) The Directors are not required to register a transfer of Shares in the Company unless—

- (a) the transfer and any Share certificate have been Lodged at the Company's Registered Office;
- (b) any fee payable on registration of the transfer has been paid; and
- (c) the Directors have been given any further information they reasonably require to establish the right of the person transferring the Shares to make the transfer.

(3) The Directors may refuse to register a transfer of Shares in the Company if—

- (a) the Shares are not fully paid; or
- (b) the Company has a lien on the Shares.

(4) The Directors may suspend registration of transfers of Shares in the Company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any one calendar year.

*Right to refuse registration*

63.—(1) The Directors may in their absolute discretion and without assigning any reason decline to register any transfer of Shares.

(2) The Directors may in their absolute discretion refuse to register any transfer of Shares on which stamp duty or other taxes of a similar nature are payable but unpaid.

*Pre-emption for existing Members on transfer of Shares in a Private Company*

64.—(1) Before issuing Shares of a particular Class, the Directors of a Private Company must offer them to the existing holders of Shares of that Class. As far as practicable, the number of Shares offered to each member must be in proportion to the number of Shares of that Class that they already hold.

(2) To make the offer, the Directors must give the members a statement setting out the terms of the offer, including—

- (a) the number of Shares offered; and
- (b) the period for which it will remain open.

(3) The Directors may issue any Shares not taken up under the offer under this clause as they see fit.

(4) The Company may by resolution passed at a General Meeting authorise the Directors to make a particular issue of Shares without complying with this clause.

## PART 15—TRANSMISSION OF SHARES

*Transmission of Shares which are not held jointly on death*

65.—(1) If a member who does not own Shares jointly dies, the Company will recognise only the personal representative of the deceased member as being entitled to the deceased member's interest in the Shares.

(2) If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the Shares—

- (a) the personal representative may—
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the Shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the Shares, to the same rights as the deceased member.

(3) On receiving an election under sub-clause (2)(a)(i), the Company must register the personal representative as the holder of the Shares.

(4) A transfer under sub-clause (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

*Transmission of Shares held jointly on death*

66. If a member who owns Shares jointly dies, the Company will recognise only the survivor as being entitled to the deceased member's interest in the Shares. The estate of the deceased member is not released from any liability in respect of the Shares.

*Transmission of Shares on bankruptcy*

67.—(1) If a person entitled to Shares because of the bankruptcy of a member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the Shares, the person may—

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
- (b) by giving a completed transfer form to the Company, transfer the Shares to another person.

(2) On receiving an election under sub-clause (1)(a), the Company must register the person as the holder of the Shares.

(3) A transfer under sub-clause (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(4) This section has effect subject to the Bankruptcy Act (Cap. 48).

*Transmission of Shares on mental incapacity*

68.—(1) If a person entitled to Shares because of the mental incapacity of a member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the Shares—

- (a) the person may—
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the Shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Shares, to the same rights as the member.

(2) On receiving an election under sub-clause (1)(a)(i), the Company must register the person as the holder of the Shares.

(3) A transfer under sub-clause (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

**PART 16—INSPECTION OF BOOKS***Directors may allow Member to inspect Books*

69.—(1) Except as otherwise required by the Companies Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the Books of the Company or any of them will be open for inspection by members other than Directors.

(2) A member other than a Director does not have the right to inspect any Books of the Company unless the member is authorised to do so by a Court order or a resolution of the Directors.

## PART 17—AUDIT AND ACCOUNTS

*Company to keep accounts*

70. The Directors must cause the Company to keep written Financial Records in relation to the business of the Company in accordance with the requirements of the Companies Act.

## PART 18—WINDING UP

*Winding up*

71.—(1) Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.

(2) If the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Company—

- (a) divide among the members in kind all or any of the Company's assets; and
- (b) for that purpose, determine how he or she will carry out the division between the different classes of members,

but may not require a member to accept any Securities in respect of which there is any liability.

(3) The liquidator may, with the sanction of a Special Resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

## PART 19—COMPANIES LIMITED BY GUARANTEE

*Income and Property of the Company*

72.—(1) The income and Property of the Company will only be applied towards the promotion of the objects of the Company as adopted by the Company upon registration.

(2) No income or Property will be paid or transferred directly or indirectly to any member of the Company except for payments to a member—

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

*Admission*

73.—(1) The number of Members with which the Company proposes to be registered is unlimited.

(2) The Members of the Company are—

- (a) the persons who consented to become Members in the application for registration of the Company; and

- (b) any other persons, Companies or organisations whom or which the Directors admit to membership in accordance with this Articles of Association.

(3) Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.

(4) The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may—

- (a) accept or reject the application; or
- (b) ask the applicant to give more evidence of eligibility for membership.

(5) If the Directors ask for more evidence under sub-clause (4), their determination of the application for membership is deferred until the evidence is given.

(6) The Directors do not have to give any reason for rejecting an application for membership.

(7) As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's entrance fee and first annual subscription.

(8) The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

*Ceasing to be a Member*

74.—(1) A Member's membership of the Company will cease—

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member—
  - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;
  - (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
  - (iii) where the Member is an individual, if the Member—
    - (iv) dies;
    - (v) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
    - (vi) is convicted of an offence;

(vii) where the Member is not an individual, if—

- (i) a liquidator is appointed in connection with the winding- up of the Member; or
- (ii) an order is made by a Court for the winding up or deregistration of the Member.

(2) Any Member ceasing to be a Member—

- (a) will not be entitled to any refund (or part refund) of a subscription; and
- (b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

*Entitlement to vote*

75. A Member entitled to vote at a General Meeting has one vote.

*Payments to Directors*

76. No payment will be made to any Director of the Company other than payment—

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by the Companies Act or a contract of insurance permitted by the Companies Act.

*Winding up*

77.—(1) If the Company is wound up—

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the Property of the Company for the—
- (c) payment of debts and liabilities of the Company in relation to sub-clause (1)(b), contracted before the person ceased to be a Member and payment of costs, Charges and expenses of winding up; and



(d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.00.

(2) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another Company which, by its Articles of Association, is—

- (a) required to pursue charitable purposes only;
- (b) required to apply its profits if any, or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its Directors,

such Company to be determined by the Members at or before the winding up and in default, by application to the Court for determination.

## PART 20—UNLIMITED LIABILITY COMPANIES

### *Admission*

78.—(1) The number of Members with which the Company proposes to be registered is unlimited.

(2) The Members of the Company are—

- (a) the persons who consented to become Members in the application for registration of the Company; and
- (b) any other persons, Companies or organisations whom or which the Directors admit to membership in accordance with this Articles of Association.

(3) Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.

(4) The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may—

- (a) accept or reject the application; or
- (b) ask the applicant to give more evidence of eligibility for membership.

(5) If the Directors ask for more evidence under clause 73(4), their determination of the application for membership is deferred until the evidence is given.

(6) The Directors do not have to give any reason for rejecting an application for membership.

(7) As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's entrance fee and first annual subscription.

(8) The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

*Ceasing to be a Member*

79.—(1) A Member's membership of the Company will cease—

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member—
  - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;
  - (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (c) where the Member is an individual, if the Member—
  - (i) dies;
  - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (iii) is convicted of an offence;
- (d) where the Member is not an individual, if—
  - (i) a liquidator is appointed in connection with the winding-up of the Member; or
  - (ii) an order is made by a Court for the winding up or deregistration of the Member.

(2) Any Member ceasing to be a Member—

- (a) will not be entitled to any refund or part refund, of a subscription; and
- (b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

*Entitlement to vote*

80. A Member entitled to vote at a General Meeting has one vote.

*Winding up*

81.—(1) If the Company is wound up the amount which—

- (a) each Member; and

- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the Property of the Company for the—
  - (c) payment of debts and liabilities of the Company and payment of costs, Charges and expenses of winding up; and
  - (d) adjustment of the rights of the contributories amongst themselves,
- is unlimited.

(2) If the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Company—

- (a) divide among the Members in kind all or any of the Company's assets; and
- (b) for that purpose, determine how he or she will carry out the division between the different classes of Members,

but may not require a Member to accept any Securities in respect of which there is any liability.

(3) The liquidator may, with the sanction of a Special Resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

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SCHEDULE 3  
(Section 284(c))

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MINIMUM CONTENT REQUIREMENTS FOR A PROSPECTUS

*Company details*

1.—(1) State—

- (a) the full name, date and place of registration, registration number if any, and Registered Office address of the Company offering the Securities or if it does not have a Registered Office, its address in Fiji; and
- (b) the names of the top twenty holders of Securities being offered by the Company at a date less than 21 days before the issue date of the Prospectus and the amount of each of those shareholdings.

(2) In relation to any Subsidiary of the Company, provide—

- (a) the date and place of registration;
- (b) a brief summary of its history;
- (c) a list of the major Members and percentage interest in the Subsidiary; and
- (d) a statement of the amount of issued and paid-up capital.

*Details of the offer*

## 2.—(1) State—

- (a) the number and type of Securities to be offered;
- (b) who is eligible to participate in the offer and the number of Securities, which are proposed to be issued to different groups of applicants;
- (c) the manner in which entitlements or allotments will be determined;
- (d) the issue price for each Securities, the total amount to be raised and any other conditions applicable to the offer;
- (e) the minimum subscription amount to be raised under the offer;
- (f) the minimum amount for which an applicant can apply;
- (g) the minimum number of Securities that can be applied for and the multiples of additional Securities which investors can apply for;
- (h) the estimated net cash proceeds of the offer and the intended use of the proceeds;
- (i) the opening and closing dates of the offer, date for allotment of Securities, and the date for the despatch of new Securities certificates;
- (j) whether the Directors reserve the right to extend the closing date;
- (k) for Companies intending to list on a Securities Exchange, the date of listing;
- (l) the date on which monies will be refunded to applicants if—
  - (i) the minimum subscription amount is not met;
  - (ii) the Company does not list on a Securities Exchange, for Companies intending to list on a Securities Exchange; or
  - (iii) the applicant is not issued with the full amount of Securities for which the applicant applied; and
- (m) the purpose for which the funds raised will be used.

(2) Contain instructions and procedures on how to apply for Securities under the Prospectus and how to complete the accompanying application form;

(3) Contain the terms and conditions for the application for Securities under the Prospectus; and

(4) Explain the risks of participating in the offer, including, but not limited to, any risks which could materially affect the prospects of the Company such as—

- (a) the competitive position of the Company;
- (b) growth management and performance;

- (c) capital requirements;
- (d) legal environment;
- (e) research and development;
- (f) financial performance;
- (g) international business exposure, including, but not limited to, foreign currency exposure;
- (h) future profitability and dividends;
- (i) liquidity;
- (j) operational risks;
- (k) Share price risk;
- (l) changes in law and Accounting Standards;
- (m) litigation; and
- (n) terrorism.

*Information about Directors*

3. In respect of each Director of the Company, state—

- (a) the name, age, residential address and technical or qualifications if any, of each Director of the Company and if a Director is also an employee of the Company, the title of the Director's position;
- (b) a profile including business and management experience;
- (c) the date of expiration of the current term of office, where applicable, and the period for which the person has served in that office;
- (d) their shareholding both direct and indirect in the Company, and to state the ultimate beneficial ownership of any Shares held under a nominee, Company or trustee arrangements;
- (e) directorships and shareholdings in all other Public Companies for the past 2 years;
- (f) whether or not any Director, is or has been—
  - (i) involved in a application under any bankruptcy or Insolvency laws was filed and not struck out against such person or any partnership in which he or she was a partner or any Company of which he or she was a Director;
  - (ii) convicted in a criminal proceeding or is a named subject of a pending criminal proceeding; or

- (iii) subject of any order, judgment or ruling of any Court of competent jurisdiction or the Reserve Bank temporarily enjoining him or her from acting as an investment adviser, dealer in Securities, Director or employee of a Financial Institution and engaging in any type of business practice or activity;
- (g) the interests of the Directors in the success of the offer;
- (h) whether any person other than the Members of the Company in General Meeting or Directors of the Company acting as a board to fill a casual vacancy, has the right to appoint a Director or Directors of the Company and—
  - (i) the name of that person;
  - (ii) the name of each Director who has been appointed by that person; and
  - (iii) a statement whether or not that person has the right to vote in the election of other Directors of the Company;
- (i) where—
  - (i) a Director of the Company is entitled to remuneration from the Company or any of its Subsidiaries other than by way of Directors' fees; and
  - (ii) the remuneration is payable under a contract of service other than a contract terminable, without payment of compensation, by the issuer or any Subsidiary on notice of 2 years or less, the amount of the remuneration and all other principal terms of the contract; and
- (j) if there are any existing or proposed service agreements between the Company and its Directors.

*Auditors, experts and advisers*

4. State—

- (a) the names of the Company's Auditors by both audit firm, audit Company and individual names, and of any accountants, Financial Institutions, Brokers, Investment Advisers or solicitors by firm or Company name, who have been involved in the preparation of the Prospectus;
- (b) the names, addresses, and qualifications of any experts named in the Prospectus;
- (c) if the offer of Securities is underwritten, the name and address of the underwriter; and
- (d) the interests of any consultant engaged by the Company in the preparation of the offer in the success of the offer.

*Overview of the Company*

5.—(1) Provide a group structure in the form of a diagram including all Subsidiaries and a the percentage interests held.

(2) Provide summaries of—

- (a) the business activities of the Company;
- (b) the types of products manufactured or services provided by the Company;
- (c) the Company's estimated market coverage, position and share supported by studies or reports;
- (d) any new or proposed products or services;
- (e) if products are exported, the percentage and names of the countries exported to;
- (f) the availability of raw materials and supplies;
- (g) any interruptions in the business which may have had a significant effect on the operations of the Company during the last 12 months;
- (h) in respect of key employees including the total number of employees; training and development programmes undertaken and on-going, and whether employees are members of any unions and, if so, to name the unions;
- (i) the modes of marketing, distributions and sales;
- (j) the production/operating capacities and output of the Company;
- (k) the principal tangible and intangible assets and production facilities and any impairment to same;
- (l) business development plans and future plans as well as steps taken including strategies to be adopted to ensure growth and prospects of the Company in the light of the industry prospects, outlook and conditions, future plans and strategies and competition;
- (m) any restrictions on the powers of Directors;
- (n) all material contracts to which the Company is a party;
- (o) rights attached to the Securities including voting, dividends, liquidation and other material provisions of Articles of Association of the Company;
- (p) any current or proposed acquisitions of Property, businesses or entities;
- (q) any legal proceedings, alternative dispute resolution proceedings including arbitrations, and any disputes that are pending as at the issue date of the Prospectus which may have a material adverse effect on the Company;
- (r) the prospects of the Company;

- (s) any restrictions on the ability of any Subsidiary of the Company to distribute profits, including, but not limited to restrictions that result from any undertaking given, or contract or deed entered into, by the Company or any of its Subsidiaries; and
- (t) any restrictions on the ability of the Company or any Subsidiary of the Company to borrow, including, but not limited to, restrictions that result from any undertaking given, or contract or deed entered into, by the Company issuer or any of its Subsidiaries.

*Overview of the industry*

6. Provide a summary of each industry in which the Company operates, including summaries of—

- (a) the industry and the Company's position within the industry;
- (b) past performance if applicable;
- (c) future growth;
- (d) industry players and competition;
- (e) the relevant laws and regulations governing the industry;
- (f) demand/supply conditions;
- (g) substitute products/services;
- (h) the prospects and outlook of the industry; and
- (i) the industry's reliance on and vulnerability to imports.

*Historical financial information*

7.—(1) Include Financial Statements which have been audited for a Financial Year which has ended within 6 months of the issue date of the Prospectus and in relation to those Financial Statements, provide—

- (a) segmental analysis of revenue/operating profits by business unit or Subsidiary, products or services and markets or geographical locations;
- (b) details as to the extent of which any material change in net revenues is attributable to changes in prices, volumes or amount of products being sold or the introduction of new products or services;
- (c) if material, discussion of the impact of foreign exchange, interest rates on operating profits;
- (d) summaries of—
  - (i) taxation considerations for the Company;
  - (ii) exceptional and extraordinary items; and
  - (iii) continuing and discontinuing operations if applicable;



- (e) discussion of any known trends, demands, commitments, events or uncertainties that—
  - (i) have had or the Company expects to have, a material favourable or unfavourable impact on the financial performance, position and operations of the Company; and
  - (ii) would cause the historical Financial Statements to be not necessarily an indication of future financial information.
- (f) a description of the material sources of liquidity, whether internal or external and a brief discussion of any material unused sources of liquidity; and
- (g) a classification of the total outstanding borrowings in the Balance Sheet into long term and short term, interest bearing and non-interest bearing and for all foreign borrowings to be identified separately with their corresponding foreign currencies amount.

(2) If the issue date of the Prospectus is less than 6 months since the end of the last Financial Year, include interim Financial Reports in the same form as Financial Reports for a full Financial Year.

*Projected financial information*

8.—(1) Projected Financial Statements for the Company for the next 3 years.

(2) Directors' analysis of the estimate, forecasts and/or projections and commentary on achievability, in light of the following—

- (a) future prospects of the industry;
- (b) future plans and strategies to be adopted; and
- (c) the level of gearing, liquidity and working capital requirements.

(3) An estimate/forecast and/or projection must be realistic and achievable to provide investors with information on the Company's prospects.

(4) A dividend estimate or forecast which includes—

- (a) a dividend policy;
- (b) a dividend rate; and
- (c) gross/net amount.

*Independent accountant's report*

9.—(1) An independent account must—

- (a) not be the Auditor for the Company or involved in the preparation of the Company's current financial accounts; and

- (b) be a chartered accountant with a current Certificate of Public Practice issued by the Fiji Institute of Accountants in accordance with the Fiji Institute of Accountants Act (Cap. 259).

(2) The report must—

- (a) be signed and dated;
- (b) state—
  - (i) the work done by the Independent Accountant;
  - (ii) the scope and limitations of the work done;
  - (iii) the existence of any relationship which the accountant has with the Company;
  - (iv) whether the accountant has obtained all information and explanations that he or she has required;
  - (v) whether or not, in the accountant's opinion, the projected Financial Statements that are required to be included in the Prospectus ("Projected Financial Statements")—
    - A. comply with all legal requirements for the content of a Prospectus;
    - B. comply with Accounting Standards; and
    - C. present fairly the state of Affairs of the Company as at the date of the Prospectus for the period to which the Projected Financial Statements relate, and, if they do not, state the respects in which they do not;
  - (vi) whether any amounts in the Projected Financial Statements have been taken from audited Financial Statements of the Company, and whether or not the amounts have been correctly taken; and
  - (vii) whether or not in his or her opinion any forecasts included in the Prospectus have been properly prepared on the basis of the stated assumptions, and have been presented in accordance with Accounting Standards and on a basis consistent with the accounting policies adopted by the Company, and disclosed in the report.

*Other*

10.—(1) Specify any documents required by Section 291 to be endorsed on or attached to the Prospectus for the purposes of that section.

(2) Contain all information, statements, certificates, and other matters that it is required to contain by regulations made under this Act.

SCHEDULE 4  
(Section 286(c))

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MINIMUM CONTENT REQUIREMENTS FOR OFFER DOCUMENT

*Company details*

1. State—

- (a) the full name, date and place of incorporation, registration number if any and Registered Office address of the Company offering the Securities or if it does not have a Registered Office, its address in Fiji; and
- (b) the names of the top twenty holders of Securities being offered by the Company at a date less than 21 days before the issue date of the Offer Document and the amount of each of those shareholdings.

*Details of the offer*

2.—(1) State—

- (a) the number and type of Securities to be offered;
- (b) who is eligible to participate in the offer and the number of Shares, Debentures or Interests in a Managed Investment Scheme, which are proposed to be issued to different groups of applicants;
- (c) the manner in which entitlements or allotments will be determined;
- (d) the issue price for each Securities, the total amount to be raised and any other conditions applicable to the offer;
- (e) the minimum subscription amount to be raised under the offer;
- (f) the minimum amount for which an applicant can apply;
- (g) the minimum number of Securities that can be applied for and the multiples of additional Securities which investors can apply for;
- (h) the estimated net cash proceeds of the offer and the intended use of the proceeds;
- (i) the opening and closing dates of the offer, date for allotment of Securities, and the date for the despatch of new Securities certificates;
- (j) whether the Directors reserve the right to extend the closing date;
- (k) for Companies intending to list on a Securities Exchange, the date of listing;
- (l) the date on which monies will be refunded to applicants if—
  - (i) the minimum subscription amount is not met;
  - (ii) the Company does not list on a Securities Exchange, for Companies intending to list on a Securities Exchange;

- (iii) the applicant is not issued with the full amount of Securities for which the applicant applied;
- (m) the purpose for which the funds raised will be used;
- (2) contain instructions and procedures on how to apply for Securities under the Prospectus and how to complete the accompanying application form;
- (3) contain the terms and conditions for the application for Securities under the Prospectus; and
- (4) explain the risks of participating in the offer, including, but not limited to, any risks which could materially affect the prospects of the Company such as—
  - (a) the competitive position of the Company;
  - (b) growth management and performance;
  - (c) capital requirements;
  - (d) legal environment;
  - (e) research and development;
  - (f) financial performance;
  - (g) international business exposure, including, but not limited to, foreign currency exposure;
  - (h) future profitability and dividends;
  - (i) liquidity;
  - (j) operational risks;
  - (k) Share price risk;
  - (l) changes in law and Accounting Standards;
  - (m) litigation; and
  - (n) terrorism.

*Information about Directors*

3. In respect of each Director of the Company, state—

- (a) the name, age, residential address and technical or qualifications if any, of each Director of the Company and if a Director is also an employee of the Company, the title of the Director's position;
- (b) a profile including business and management experience;
- (c) the date of expiration of the current term of office, where applicable, and the period for which the person has served in that office; and
- (d) their shareholding both direct and indirect in the Company, and to state the ultimate beneficial ownership of any Shares held under a nominee, Company or trustee arrangements.

*Auditors, experts and advisers*

## 4. State—

- (a) the names of the Company's Auditors by both audit firm, audit Company and individual names, and of any accountants, financial institutions, brokers, investment advisers or solicitors by firm or company name, who have been involved in the preparation of the Offer Document;
- (b) the names, addresses, and qualifications of any experts named in the Offer Document;
- (c) if the offer of Securities is underwritten, the name and address of the underwriter; and
- (d) the interests of any consultant engaged by the Company in the preparation of the offer in the success of the offer.

*Historical financial information*

5.—(1) Include a Financial Statements which has been audited for a Financial Year which has ended within 6 months of the issue date of the Offer Document and in relation to that Financial Statements, provide—

- (a) segmental analysis of revenue/operating profits by business unit or Subsidiary, products or services and markets or geographical locations;
- (b) details as to the extent of which any material change in net revenues is attributable to changes in prices, volumes or amount of products being sold or the introduction of new products or services;
- (c) if material, discussion of the impact of foreign exchange, interest rates on operating profits;
- (d) summaries of—
  - (i) taxation considerations for the Company;
  - (ii) exceptional and extraordinary items; and
  - (iii) continuing and discontinuing operations if applicable;
- (e) discussion of any known trends, demands, commitments, events or uncertainties that—
  - (i) have had or the Company expects to have, a material favourable or unfavourable impact on the financial performance, position and operations of the Company; and
  - (ii) would cause the historical Financial Statements to be not necessarily an indication of future financial information;
- (f) a description of the material sources of liquidity, whether internal or external and a brief discussion of any material unused sources of liquidity; and

- (g) a classification of the total outstanding borrowings in the Balance Sheet into long term and short term, interest bearing and non-interest bearing and for all foreign borrowings to be identified separately with their corresponding foreign currencies amount.

(2) If the issue date of the Prospectus is less than 6 months since the end of the last Financial Year, include interim Financial Reports in the same form as Financial Reports for a full Financial Year.

*Projected financial information*

6.—(1) Projected Financial Statements for the Company for the next 3 years.

(2) Directors' analysis of the estimate, forecasts and/or projections and commentary on achievability, in light of the following—

- (a) future prospects of the industry;
- (b) future plans and strategies to be adopted; and
- (c) the level of gearing, liquidity and working capital requirements.

(3) An estimate/forecast and/or projection must be realistic and achievable to provide investors with information on the Company's prospects.

(4) A dividend estimate or forecast which includes—

- (a) a dividend policy;
- (b) a dividend rate; and
- (c) gross/net amount.

*Independent accountant's report*

7.—(1) An independent account must—

- (a) not be the Auditor for the Company or involved in the preparation of the Company's current financial accounts; and
- (b) be a chartered accountant with a current Certificate of Public Practice issued by the Fiji Institute of Accountants in accordance with the Fiji Institute of Accountants Act (Cap. 259).

(2) The report must—

- (a) be signed and dated;
- (b) state—
  - (i) the work done by the Independent Accountant;
  - (ii) the scope and limitations of the work done;
  - (iii) the existence of any relationship which the accountant has with the Company;

- (iv) whether the accountant has obtained all information and explanations that he or she has required;
- (v) whether or not, in the accountant's opinion, the projected Financial Statements that are required to be included in the Offer Document (Projected Financial Statements)—
  - A. comply with all legal requirements for the content of a Offer Document;
  - B. comply with Accounting Standards; and
  - C. present fairly the state of Affairs of the Company as at the date of the Offer Document for the period to which the Projected Financial Statements relate, and, if they do not, state the respects in which they do not;
- (vi) whether any amounts in the Projected Financial Statements have been taken from audited Financial Statements of the Company, and whether or not the amounts have been correctly taken; and
- (vii) whether or not in his or her opinion any forecasts included in the Offer Document have been properly prepared on the basis of the stated assumptions, and have been presented in accordance with Accounting Standards and on a basis consistent with the accounting policies adopted by the Company, and disclosed in the report.

*Other*

8.—(1) Specify any documents required by section 291 to be endorsed on or attached to the Offer Document for the purposes of that section.

(2) Contain all information, statements, certificates, and other matters that it is required to contain by regulations made under this Act.

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SCHEDULE 5  
(Section 713(2)(a))

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PRESCRIBED AMOUNTS

<i>Item</i>	<i>Provision</i>	<i>Prescribed Amount</i>
1.	Section 24	\$50
2.	Section 49	\$100
3.	Section 86(6)	\$20
4.	Section 86(7)	\$50
5.	Section 240(4)(a)	\$100
6.	Section 258(2)(c)	\$200
7.	Section 260(4)(c)	\$200
8.	Section 269(1)	\$100
9.	Section 273(1)	\$200
10.	Section 290(2)(c)	\$200
11.	Section 304(2)	\$100
12.	Section 324(3)	\$20
13.	Section 325(1)(c)	\$500
14.	Section 368(5)	\$20
15.	Section 379(6)(b)	\$20
16.	Section 379(7)(a)	\$50
17.	Section 534(5)	\$20
18.	Section 547(4)	\$20

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SCHEDULE 6  
(Section 713(2)(b))

MAXIMUM PENALTIES

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
1.	Section 14	\$300
2.	Section 20(4)	\$600
3.	Section 24	\$300
4.	Section 26	\$600
5.	Section 28(1)	\$300
6.	Section 28(2)	\$300
7.	Section 30	\$600
8.	Section 31(5)	\$300
9.	Section 32	\$6000
10.	Section 34(1)	\$300
11.	Section 34(2)	\$300
12.	Section 34(3)	\$300
13.	Section 36	\$600
14.	Section 38	\$600
15.	Section 39(2)	\$300
16.	Section 46(1)	\$300
17.	Section 46(2)	\$300
18.	Section 46(9)	\$300
19.	Section 49	\$300
20.	Section 50(1)	\$300
21.	Section 50(2)	\$300
22.	Section 50(4)	\$600
23.	Section 50(5)	\$600
24.	Section 50(6)	\$300
25.	Section 51(2)	\$300
26.	Section 57(1)	\$300
27.	Section 59(1)	\$300
28.	Section 59(2)	\$300
29.	Section 61(1)	\$300
30.	Section 61(3)	\$300
31.	Section 62(1)	\$300
32.	Section 62(11)	\$300
33.	Section 62(12)	\$300
34.	Section 63(2)	\$300
35.	Section 63(3)	\$300

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
36.	Section 64	\$300
37.	Section 66	\$300
38.	Section 72	\$300
39.	Section 76(2)	\$300
40.	Section 77	\$300
41.	Section 79(2)	\$600
42.	Section 81(1)	\$600
43.	Section 81(2)	\$600
44.	Section 82(1)	\$300
45.	Section 82(2)	\$300
46.	Section 82(3)	\$300
47.	Section 82(5)	\$300
48.	Section 82(6)	\$300
49.	Section 83(1)	\$300
50.	Section 83(2)	\$300
51.	Section 83(3)	\$600
52.	Section 84(1)	\$300
53.	Section 85(1)	\$600
54.	Section 85(2)	\$600
55.	Section 86(1)	\$600
56.	Section 89	\$300
57.	Section 90	\$300
58.	Section 91(1)	\$300
59.	Section 91(2)	\$300
60.	Section 92(1)	\$300
61.	Section 92(2)	\$300
62.	Section 93(2)	\$300
63.	Section 94(1)	\$300
64.	Section 99(1)	\$1,500
65.	Section 100(1)	\$300
66.	Section 100(3)	\$300
67.	Section 101(2)	\$300
68.	Section 101(4)	\$1,500
69.	Section 118(1)	\$300
70.	Section 118(2)	\$300
71.	Section 122(6)	\$300
72.	Section 123(2)	\$300
73.	Section 125(4)	\$300
74.	Section 128	\$300

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
75.	Section 129(1)	\$600
76.	Section 129(2)	\$600
77.	Section 129(3)	\$600
78.	Section 130	\$600
79.	Section 131	\$600
80.	Section 132	\$300
81.	Section 137(2)	\$300
82.	Section 139(1)	\$300
83.	Section 139(2)	\$300
84.	Section 139(5)	\$300
85.	Section 140(3)	\$300
86.	Section 140(4)	\$300
87.	Section 142(1)	\$300
88.	Section 142(3)	\$300
89.	Section 143(1)	\$300
90.	Section 143(2)	\$300
91.	Section 144	\$300
92.	Section 145(1)	\$300
93.	Section 145(2)	\$300
94.	Section 147(2)	\$300
95.	Section 148(2)	\$300
96.	Section 149(6)	\$300
97.	Section 150	\$300
98.	Section 151	\$300
99.	Section 168(2)	\$300
100.	Section 170(1)	\$600
101.	Section 170(2)	\$600
102.	Section 171(4)	\$600
103.	Section 172	\$600
104.	Section 173	\$300
105.	Section 174(1)	\$600
106.	Section 174(2)	\$600
107.	Section 174(3)	\$600
108.	Section 174(4)	\$600
109.	Section 174(5)	\$600
110.	Section 175(1)	\$300
111.	Section 175(3)	\$300
112.	Section 185(3)	\$300
113.	Section 187(6)	\$300

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
114.	Section 189(1)	\$300
115.	Section 189(2)	\$300
116.	Section 199(4)	\$300
117.	Section 202	\$300
118.	Section 203	\$300
119.	Section 204(2)	\$120,000
120.	Section 205	\$1,500
121.	Section 207	\$6,000
122.	Section 210	\$1,500
123.	Section 211(1)	\$300
124.	Section 211(2)	\$300
125.	Section 212	\$300
126.	Section 213(1)	\$1,500
127.	Section 213(3)	\$300
128.	Section 215	\$1,500
129.	Section 216	\$300
130.	Section 219(1)	\$300
131.	Section 219(3)	\$300
132.	Section 219(4)	\$120,000
133.	Section 222(1)	\$300
134.	Section 222(2)	\$300
135.	Section 222(3)	\$300
136.	Section 222(4)	\$300
137.	Section 222(5)	\$300
138.	Section 223(2)	\$300
139.	Section 223(4)	\$300
140.	Section 227	\$300
141.	Section 228(1)	\$300
142.	Section 228(6)	\$300
143.	Section 230(1)	\$300
144.	Section 230(2)	\$300
145.	Section 230(3)	\$300
146.	Section 231(2)	\$300
147.	Section 231(3)	\$300
148.	Section 232	\$300
149.	Section 233(2)	\$300
150.	Section 233(3)	\$300
151.	Section 233(4)	\$300
152.	Section 233(5)	\$300

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
153.	Section 233(6)	\$300
154.	Section 235(2)	\$300
155.	Section 235(3)	\$120,000
156.	Section 238(1)	\$600
157.	Section 239(1)	\$600
158.	Section 242(1)	\$600
159.	Section 245	\$600
160.	Section 248(1)	\$300
161.	Section 250(9)	\$600
162.	Section 251(1)	\$600
163.	Section 251(3)	\$600
164.	Section 251(4)	\$600
165.	Section 251(5)	\$600
166.	Section 251(6)	\$600
167.	Section 252(1)	\$1,500
168.	Section 252(3)	\$1,500
169.	Section 252(4)	\$1,500
170.	Section 256(1)	\$300
171.	Section 256(2)	\$300
172.	Section 256(3)	\$300
173.	Section 257(1)	\$1,500
174.	Section 257(2)	\$1,500
175.	Section 259(4)	\$600
176.	Section 260(2)	\$1,500
177.	Section 261(3)	\$1,500
178.	Section 261(7)	\$1,500
179.	Section 262(1)	\$300
180.	Section 262(2)	\$300
181.	Section 262(3)	\$300
182.	Section 262(4)	\$300
183.	Section 263(1)	\$300
184.	Section 263(2)	\$300
185.	Section 263(3)	\$300
186.	Section 263(4)	\$300
187.	Section 264(1)	\$300
188.	Section 264(2)	\$300
189.	Section 264(3)	\$300
190.	Section 264(4)	\$300
191.	Section 265(1)	\$1,500

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
192.	Section 265(2)	\$1,500
193.	Section 268	\$30,000
194.	Section 269(1)	\$600
195.	Section 270(1)	\$600
196.	Section 270(2)	\$600
197.	Section 270(3)	\$600
198.	Section 270(6)	\$600
199.	Section 271(1)	\$300
200.	Section 272	\$1,500
201.	Section 273(1)	\$300
202.	Section 277	\$300
203.	Section 280(1)	\$1,500
204.	Section 280(3)	\$1,500
205.	Section 280(4)	\$1,500
206.	Section 280(5)	\$1,500
207.	Section 281	\$6,000
208.	Section 282	\$6,000
209.	Section 283(1)	\$300
210.	Section 284	\$300
211.	Section 286	\$300
212.	Section 288(1)	\$1,500
213.	Section 288(2)	\$300
214.	Section 288(3)	\$300
215.	Section 289(1)	\$300
216.	Section 289(2)	\$300
217.	Section 289(3)	\$300
218.	Section 289(4)	\$300
219.	Section 289(5)	\$300
220.	Section 289(6)	\$300
221.	Section 291(2)	\$300
222.	Section 291(3)	\$300
223.	Section 294	\$1,500
224.	Section 295(1)	\$1,500
225.	Section 296	\$1,500
226.	Section 297(1)	\$1,500
227.	Section 297(2)	\$1,500
228.	Section 302	\$300
229.	Section 303	\$300
230.	Section 305	\$300

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
231.	Section 306	\$300
232.	Section 307(1)	\$300
233.	Section 307(3)	\$300
234.	Section 307(4)	\$300
235.	Section 310	\$300
236.	Section 311	\$300
237.	Section 313	\$300
238.	Section 316(1)	\$300
239.	Section 316(2)	\$300
240.	Section 322(1)	\$300
241.	Section 324(1)	\$300
242.	Section 324(2)	\$300
243.	Section 324(3)	\$300
244.	Section 325(1)	\$300
245.	Section 326(1)	\$300
246.	Section 326(2)	\$300
247.	Section 327(3)	\$300
248.	Section 327(4)	\$300
249.	Section 328(2)	\$300
250.	Section 328(3)	\$300
251.	Section 329(1)	\$600
252.	Section 329(2)	\$600
253.	Section 330(1)	\$300
254.	Section 333	\$300
255.	Section 336(1)	\$300
256.	Section 336(2)	\$300
257.	Section 336(5)	\$300
258.	Section 338	\$300
259.	Section 339(1)	\$300
260.	Section 339(2)	\$300
261.	Section 340	\$300
262.	Section 341(1)	\$300
263.	Section 341(2)	\$300
264.	Section 342(2)	\$300
265.	Section 343(1)	\$300
266.	Section 343(2)	\$300
267.	Section 344(6)	\$300
268.	Section 344(8)	\$300
269.	Section 345	\$300

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
270.	Section 346	\$300
271.	Section 366(1)	\$300
272.	Section 366(2)	\$300
273.	Section 367(1)	\$600
274.	Section 367(2)	\$600
275.	Section 367(3)	\$600
276.	Section 368(1)	\$300
277.	Section 368(3)	\$300
278.	Section 368(4)	\$300
279.	Section 368(5)	\$300
280.	Section 371(1)	\$300
281.	Section 372(1)	\$300
282.	Section 372(2)	\$300
283.	Section 374(1)	\$300
284.	Section 375(1)	\$300
285.	Section 375(2)	\$300
286.	Section 379(5)	\$300
287.	Section 379(6)	\$300
288.	Section 386(1)	\$1,500
289.	Section 386(2)	\$1,500
290.	Section 386(3)	\$300
291.	Section 388(1)	\$300
292.	Section 388(2)	\$300
293.	Section 390(2)	\$6,000
294.	Section 391	\$300
295.	Section 392(1)	\$300
296.	Section 392(2)	\$300
297.	Section 392(3)	\$300
298.	Section 392(4)	\$300
299.	Section 393(1)	\$300
300.	Section 394	\$300
301.	Section 395(1)	\$600
302.	Section 395(2)	\$300
303.	Section 396(1)	\$600
304.	Section 396(2)	\$600
305.	Section 398	\$3,000
306.	Section 399	\$600
307.	Section 400(1)	\$600
308.	Section 400(2)	\$300



<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
309.	Section 400(3)	\$300
310.	Section 400(4)	\$300
311.	Section 401	\$600
312.	Section 402	\$1,500
313.	Section 403(1)	\$1,500
314.	Section 404(1)	\$600
315.	Section 404(2)	\$600
316.	Section 405	\$1,500
317.	Section 407(3)	\$600
318.	Section 408(1)	\$600
319.	Section 409(1)	\$600
320.	Section 409(2)	\$600
321.	Section 412(1)	\$300
322.	Section 416(1)	\$300
323.	Section 416(2)	\$300
324.	Section 421(1)	\$300
325.	Section 422(1)	\$1,500
326.	Section 422(2)	\$300
327.	Section 425(1)	\$300
328.	Section 427(2)	\$300
329.	Section 427(4)	\$300
330.	Section 430(1)	\$1,500
331.	Section 430(2)	\$600
332.	Section 433	\$600
333.	Section 434(1)	\$300
334.	Section 437(5)	\$300
335.	Section 437(9)	\$300
336.	Section 438(1)	\$300
337.	Section 438(2)	\$300
338.	Section 438(3)	\$300
339.	Section 439(2)	\$300
340.	Section 439(3)	\$300
341.	Section 440(3)	\$300
342.	Section 440(6)	\$300
343.	Section 440(9)	\$300
344.	Section 440(11)	\$300
345.	Section 441	\$300
346.	Section 442	\$1,500
347.	Section 447(1)	\$600

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
348.	Section 448(1)	\$300
349.	Section 448(2)	\$300
350.	Section 450(1)	\$300
351.	Section 450(2)	\$300
352.	Section 451(1)	\$300
353.	Section 451(2)	\$300
354.	Section 451(3)	\$300
355.	Section 452	\$300
356.	Section 493	\$300
357.	Section 496	\$600
358.	Section 499	\$1,500
359.	Section 501(1)	\$1,500
360.	Section 501(2)	\$1,500
361.	Section 505	\$300
362.	Section 506(1)	\$600
363.	Section 511(2)	\$600
364.	Section 530	\$300
365.	Section 534(1)	\$600
366.	Section 534(2)	\$600
367.	Section 534(3)	\$600
368.	Section 534(4)	\$600
369.	Section 535(1)	\$300
370.	Section 538	\$300
371.	Section 539	\$600
372.	Section 540(2)	\$300
373.	Section 541	\$300
374.	Section 545	\$300
375.	Section 546(1)	\$1,500
376.	Section 546(3)	\$1,500
377.	Section 546(4)	\$1,500
378.	Section 547(1)	\$600
379.	Section 547(2)	\$600
380.	Section 547(3)	\$600
381.	Section 547(4)	\$600
382.	Section 584(1)	\$300
383.	Section 551(1)	\$300
384.	Section 551(2)	\$300
385.	Section 551(5)	\$300
386.	Section 565(3)	\$600

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
387.	Section 580(1)	\$300
388.	Section 581(3)	\$300
389.	Section 583	\$300
390.	Section 584	\$300
391.	Section 585(1)	\$600
392.	Section 585(2)	\$600
393.	Section 585(3)	\$600
394.	Section 585(4)	\$600
395.	Section 585(7)	\$600
396.	Section 588(1)	\$600
397.	Section 588(2)	\$600
398.	Section 588(3)	\$600
399.	Section 595	\$600
400.	Section 596(1)	\$600
401.	Section 596(2)	\$600
402.	Section 596(3)	\$600
403.	Section 596(4)	\$600
404.	Section 596(7)	\$600
405.	Section 602(3)	\$300
406.	Section 602(4)	\$300
407.	Section 605(7)	\$300
408.	Section 614	\$270,000
409.	Section 633(3)	\$300
410.	Section 646(8)	\$300
411.	Section 648	\$270,000
412.	Section 649(1)	\$270,000
413.	Section 650(1)	\$270,000
414.	Section 651	\$270,000
415.	Section 652	\$270,000
416.	Section 653(1)	\$270,000
417.	Section 654(1)	\$270,000
418.	Section 655(1)	\$270,000
419.	Section 658	\$120,000
420.	Section 659(1)	\$120,000
421.	Section 659(2)	\$120,000
422.	Section 660(1)	\$300
423.	Section 664(1)	\$1,500
424.	Section 666(2)	\$120,000
425.	Section 667	\$6,000

<i>Item</i>	<i>Provision</i>	<i>Maximum Penalty</i>
426.	Section 668(1)	\$300
427.	Section 668(2)	\$120,000
428.	Section 668(3)	\$300
429.	Section 668(4)	\$300
430.	Section 669(1)	\$120,000
431.	Section 669(2)	\$6,000
432.	Section 670	\$300
433.	Section 682(1)	\$1,500
434.	Section 682(2)	\$1,500
435.	Section 683(1)	\$1,500
436.	Section 684(1)	\$300
437.	Section 684(2)	\$300
438.	Section 685	\$300
439.	Section 717(1)	\$300
440.	Section 717(2)	\$300
441.	Section 720(1)	\$300
442.	Section 720(2)	\$300
443.	Section 722(3)	\$300

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SCHEDULE 7  
(Section 713(2)(c))

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MAXIMUM IMPRISONMENT TERMS

<i>Item</i>	<i>Provision</i>	<i>Maximum Imprisonment Term</i>
1.	Section 115	5 years
2.	Section 484	1 year
3.	Section 485	1 year
4.	Section 486	1 year
5.	Section 487(1)	1 year

*February 2015*

## COMPANIES BILL 2015

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### EXPLANATORY NOTE

*(This note is not part of the Bill and is intended only to indicate its general effect)*

#### 1.0 BACKGROUND

- 1.1 This Bill seeks to modernise the laws related to the incorporation, regulation and winding up of companies in Fiji.

#### 2.0 CONSULTATION

- 2.1 The Bill is being introduced following a significant period of public consultations with the Reserve Bank of Fiji, the South Pacific Stock Exchange, the Ministry of Justice, the office of the Registrar of Companies, the office of the Administrator-General, the office of the Solicitor General and the private sector including the Fiji Institute of Accountants, other professional bodies, lawyers, accountants and other professionals. Three separate rounds of public consultations have been held.

#### 3.0 POLICY AND APPROACH

- 3.1 The Companies Act (Cap. 247) is over 30 years old, but it was based on much older UK laws, so that its origins date back more than 50 years. Its provisions are outmoded and no longer meet the needs of the Fiji market which are much more sophisticated now than when the previous law was passed. From the outset, the Government's objective has been to ensure that the new companies law should reflect best international practice while being modified to suit the requirements of the Fiji market. The Government therefore decided that it was necessary to instruct experienced international consultants who could undertake a review of comparable laws world-wide and recommend the best model for Fiji. Following a tender process, the Australian-based international Law Firm, Minter Ellison was appointed to assist the Government.
- 3.2 In drafting the Bill, the Government had regard to the provisions of existing Fiji laws including the Companies Act (Cap. 247), Capital Markets Decree 2009, the Unit Trusts Act (Cap. 228) and the Registration of Business Names

Act (Cap. 249) as well as comparative legislation in Australia, New Zealand, United Kingdom, South Africa and other common law jurisdictions. Policy and procedural documents issued by bodies such as the Capital Markets Unit of the Reserve Bank, the Listing Rules of the South Pacific Stock Exchange and current accounting practices in Fiji were also taken into account.

3.3 In proposing the new law, the Government's objectives are to introduce modern business practices and streamline regulation while being cognisant to ensure that the laws are not too complex for the needs of the Fiji market. Additionally, the Government is consciously seeking to improve corporate governance practices and make directors and company officers more accountable for their conduct.

3.4 Until now, requirements placed on companies and the business community have been located in a number of different laws. The Government formed the view that the interests of all market participants were best served by integrating laws regulating companies, the capital markets, unit trusts and business names into a single over-arching 'one stop shop'.

3.5 The new law will not, however, stand alone. The mechanics needed to ensure the smooth working of the company laws will be found in new regulations and rules which would be implemented following the passing of the Bill.

#### 4.0 PROVISIONS OF BILL

4.1 The Bill repeals the following laws—

- (a) Companies Act (Cap. 247);
- (b) Capital Markets Decree 2009;
- (c) Unit Trusts Act (Cap. 228); and
- (d) Registration of Business Names Act (Cap. 249).

4.2 Part 1 of the Bill contains the preliminary provisions such as the short title and the commencement provision.

4.3 Part 1 also contains definitions and interpretation provisions.

4.4 Part 2 maintains the role of the Registrar of Companies and establishes regulatory responsibility for different parts of the Act. The Reserve Bank of Fiji has responsibility for regulating takeovers, securities exchanges and central depositories, securities industry licences, capital raisings, debentures and managed investment schemes. The Registrar has regulatory responsibility for the remainder of the Act. Each of the Reserve Bank and the Registrar have powers and responsibilities to investigate possible breaches of the Act for which they have responsibility and for prosecuting any breaches established.

4.5 Part 3 sets out procedures for incorporating companies. Some significant changes in this area include—

- (a) *Minimum number of members.* The required number of members under the Companies Act (Cap. 247) was seven or more persons in the case of a public company) and two or more persons in the case of private company. If a company had fewer than the required number of members at any time, the members were severally liable for the debts of the company. Under the Bill, each company whether public or private, must have at least one member and members no longer have any exposure for the debts of the company;
- (b) *Different types of Private Companies.* The Companies Act (Cap. 247) did not distinguish between types of “private companies”. The new Companies Bill distinguishes between small, medium and large private companies. The key consequences of this distinction is that small private companies have reduced obligations with respect to the disclosure of financial information to shareholders, appointing auditors and lodging financial statements; and
- (c) *Company names.* Under the Bill, a public company must have “Limited”, or “Ltd” at the end of its name and a private company must have “Pte Limited” or “Pte Ltd” at the end of its name. The transitional provisions in the Bill allow a period of 3 years for a private company to start using the new company name extension. There is no need to register any name change resulting from the new rules with the Registrar of Companies. Unlimited liability companies must have ‘Unlimited Liability Company’ at the end of their names.

Part 3 also deals with Business Names. As noted, the Bill repeals the Registration of Business Names Act (Cap. 249) and includes new provisions for the registration of business names which are designed to streamline the processes involved.

4.6 Part 4 deals with the basic features of a company. In contrast to the position under the Companies Act (Cap. 247), a company incorporated under the Bill must not have a memorandum of association but must adopt articles of association, which govern the internal management of the company. Schedule 2 of the Bill sets out the standard form articles of association, which can be adopted on registration or by special resolution at any time following registration. Alternatively, a company may adopt a different form of articles of association if it wishes to do so. The transitional provisions provide that for an existing company, its memorandum of association will, upon commencement of the new Act, be deemed to be incorporated into its articles of association, with the result that henceforth all companies will have only one governing document, which will be the articles of association.

The Companies Act did not provide for a principal place of business which differed from the registered office. Part 4 of the Bill makes a distinction between the two to permit a company's registered office to be different from its principal place of business.

4.7 Part 5 of the Bill allows a party dealing with a company to make certain assumptions about the proper execution of a contract or other document, provided that it has been executed in accordance with the Bill. The new provisions seek to address the situation where a party deals in good faith with a person who is represented as being duly authorised by the company, and should be protected against later claims by the company that the person purporting to act for it, had no authority. This Part also abolishes the requirement for a company to have a common seal although companies can continue to have company seals if they wish to do so.

4.8 Part 6 sets out the requirements for foreign companies carrying on business in Fiji. In particular a foreign company cannot carry on business in Fiji unless it is both registered under the Companies Act and been granted a foreign investment registration certificate under the Foreign Investment Act. Companies incorporated outside Fiji must, within 28 days of establishing a place of business in Fiji, apply to the Registrar for registration, and include the names and postal addresses of a local agent. A local agent is a resident in Fiji authorized to accept, on behalf of the Foreign Company, service of process and any notices required to be served on the Foreign Company.

4.9 Part 7 contains some new provisions dealing with pre-incorporation contracts. The Companies Act (Cap. 247) did not contain any provisions protecting persons who conclude pre-incorporation contracts with a company's promoters before the company is incorporated, or with the ratification of such contracts. Further, its provisions concerning pre-incorporation contracts did not apply to private companies.

The Bill contains detailed provisions in relation to pre-incorporation contracts. If a person enters into a contract on behalf of a company yet to be incorporated, and the company is not subsequently registered or the contract is not ratified by the newly incorporated company within the required timeframe, the person entering into the pre-incorporation contract on behalf of the company is liable to pay damages to each other party to the contract, subject to certain conditions.

4.10 Previously, there were no provisions in the Companies Act dealing with the conversion of private companies into public companies or vice versa. Part 8 of the Bill provides a mechanism for changing company type.



4.11 Part 9 rationalises the number and type of registers which a company must keep. Companies are required to keep and maintain the following registers:

- (a) a register of members;
- (b) a register of debenture holders;
- (c) a register of charges; and
- (d) if it has issued any options – a register of option holders.

A company must allow anyone to inspect the register of members. Members of the company may inspect the register without charge. Other people may inspect the register only on payment of a fee required by the company.

4.12 Part 10 deals with directors and company other officers. It contains a number of new provisions—

- (a) *Number of directors and secretaries.* Under the Bill, a public company must have at least three directors, two of whom must ordinarily reside in Fiji and it must have at least one company secretary who must ordinarily reside in Fiji. A private company must have at least one director and at least one director must ordinarily reside in Fiji but it is not required to have a company secretary, but if it does have one or more company secretary, at least one of them must ordinarily reside in Fiji;
- (b) *Minimum age for directors and secretaries.* Directors and company secretaries must be at least 18 years of age;
- (c) *Termination payments to directors.* The Companies Act (Cap. 247) provided that any payment made as compensation for loss of office by a director or in connection with the transfer of property to a director was unlawful unless approved by the company at a general meeting. Under the Bill, such payments will still require the approval of members of the company at a general meeting unless the amount of the compensation is less than the aggregate of all remuneration payable to the director as a director during the immediately preceding 12 months, but only if the other directors who vote in favour of the payment certify that they believe that the payment is fair to the company and their grounds for that opinion;
- (d) *Directors' interests to be disclosed.* If a director of a company or any associate of the director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, the director must declare the nature and extent of that interest to the other directors; and

(e) *Directors' duties.* Most notably, the Bill introduces directors' duties into Fiji law for the first time. The Bill contains the following duties which apply to directors and officers—

- (i) a duty to act within powers;
- (ii) a duty to promote the success of the company;
- (iii) a duty to exercise independent judgment;
- (iv) a duty to exercise reasonable care, skill and diligence;
- (v) a duty to avoid conflicts of interest;
- (vi) a duty not to accept benefits from third parties although this duty does not apply to sole director / sole member companies; and
- (vii) a duty to declare any interest in a proposed transaction or arrangement and again this duty does not apply to sole director / sole member companies.

4.13 Part 11 deals with the provision of public information about directors and company secretaries.

4.14 Part 12 provides for the disqualification of certain persons from acting as company officers. Automatic disqualification can occur where a person has been convicted of certain offences under the Act. The court also has power to disqualify a person from acting as a company officer in circumstances where they have been involved with two companies which have either failed, or committed contraventions of the Act, in the preceding 7 years. Being disqualified from acting as a company officer under a corresponding foreign law can also provide grounds for the court to disqualify a person from acting as a company officer in Fiji.

4.15 Part 13 deals with director's meetings. Where a company has only one director, there is no requirement for directors' meetings. Rather a resolution is considered to have been passed when the director signs a written record of the resolution. This Part also authorises the holding of directors' meetings through the use of modern technology consented to by all directors.

4.16 Member meetings are addressed in Part 14. It deals with a number of areas including—

- (a) *General meetings.* Single shareholder companies do not need to hold member meetings. All other companies must hold annual general meetings. A company must hold an AGM within 18 months after its registration. Following its first AGM, a company must hold an AGM at least once in each calendar year and within 6 months after the end of its financial year;

- (b) *Calling of meetings.* Members are given certain rights to request the directors to call member meetings or place a resolution on the agenda of a members' meeting and if the directors do not do so, to convene the meeting themselves;
  - (c) *Rights of auditors.* The Part details to rights of auditors to receive notice of, attend and be heard at members' meetings;
  - (d) *Proxies.* The Part also details who may be appointed as a proxy, the validity of proxy appointments and the form of proxy documents; and
  - (e) *Voting and calling polls.* The procedure for voting and the calling of polls is also dealt with.
- 4.17 Part 15 deals with the keeping of minutes of directors' and members' meetings and members' rights of access to minutes of members' meetings.
- 4.18 Part 16 sets out the rights and remedies available to members who believe that they have been oppressed.
- 4.19 Part 17 deals with share capital and contains a number of new provisions—
- (a) *Par value, share premium account and authorised capital.* The concepts of par value, share premium accounts and authorised capital are abolished under the Bill;
  - (b) *Stock.* The concept of stock is also to be abolished by the Bill, and all stock is to be converted into share capital;
  - (c) *Bearer shares and share warrants.* Bearer shares, bearer stock and share warrants are to be abolished as well and must be surrendered and must be surrendered to the company within 12 months to be replaced with an equivalent number of non-bearer shares;
  - (d) *Introducing the concept of "securities".* The Companies Act (Cap. 247) only included a definition of a 'share' and did not provide for the broader concept of 'securities'. The Bill introduces the concept of 'securities' and defines it to include shares, debentures and interests in managed investment schemes. This has been done to ensure that the prospectus and disclosure rules for public offerings apply not only to shares but to all forms of securities;
  - (e) *Preference shares.* This Part also clarifies the basis on which preference shares can be issued and on which redeemable preference shares can be redeemed; and
  - (f) *Companies limited by guarantee.* Companies limited by guarantee are prohibited from paying dividends.

4.20 The Companies Act (Cap. 247) embraced the ‘capital maintenance rule’. The idea underlying that rule is that creditors look to the company’s funds for payment and, therefore, they stand to be prejudiced if the company pays out its funds by returning share capital. The capital maintenance rule has been used as justification for the prohibition of share buy-backs, distributions to shareholders out of capital and the company giving financial assistance in connection with the acquisition of its own shares. In recent times, there has been a relaxing of these rules in most major markets, subject to certain safeguards. After considering the approaches taken in a number of other jurisdictions, Part 18 of the Bill has been drafted to allow a company to—

- (a) buy-back its own securities;
- (b) reduce its issued share capital with the approval of the company’s shareholders;
- (c) undertake indirect self-acquisitions; and
- (d) provide financial assistance for the acquisition of its own shares.

The object of the provisions is allow share capital transactions to take place provided the interests of shareholders and creditors are protected. A number of safeguards have been introduced to—

- (a) address the risk of these transactions leading to the company’s insolvency;
- (b) seek to ensure fairness between the company’s members; and
- (c) require the company to disclose all material information.

4.21 Part 19 deals with the nature and numbering of shares, the requirements for share certificates and sets out requirements which apply where share certificates are lost.

4.22 Parts 20 and 21 deal with the transfer of shares, debentures and interests in managed investment schemes.

4.23 Part 22 introduces a general regime for takeovers which will be overseen by the Reserve Bank. The Part stipulates a number of principles of fairness and equity which are to apply in all takeovers. Under the new regime, a person is required to make a takeover offer where they propose to acquire an interest in a listed company, a public company which is not listed or a large private company, and as a result of the acquisition, the person’s voting power in the company will increase above 30%. The Bill requires bidders and targets to prepare statements which must be registered with the Reserve Bank – respectively, called bidder’s statements and target’s statements. If the bidder’s statement contains an offer

of securities in the bidder as consideration for the offer, it must also meet all of the requirements for a prospectus. The target's statement must include (among other things) a statement by each director as to whether they recommend that the offer be accepted or not, and giving reasons for their recommendation.

- 4.24 Under Part 23, the Reserve Bank is given power to approve and regulate Securities Exchanges and Central Depositories.
- 4.25 Under Parts 24 and 25 the Reserve Bank is given power to approve and regulate securities industry licences.
- 4.26 Part 26 regulates the offering of securities to the public. In particular—
- (a) *Registration of prospectuses.* The Part requires securities only to be issued under a Prospectus registered with the Reserve Bank, unless the offer falls within one of a limited number of exceptions (which include some small scale offerings and offerings to a single investor of securities having a value in excess of \$200,000).
  - (b) *Content.* The Part contains some formal requirements in relation to Prospectuses and stipulates some minimum content requirements which are set out in Schedule 3 to the Bill;
  - (c) *Offers to existing members.* The Bill also introduces the new concept of an 'offer document,' which may be used instead of a prospectus where securities are offered to existing members of a company. The 'offer document' is a simplified prospectus. It must still contain the same basic information as a prospectus, but the general level of detail required is lower than a prospectus. Its requirements are set out in the Bill;
  - (d) *Prospectus liability.* Liability for false or misleading or deceptive statements in a prospectus has been expanded under the Bill to include the company issuing the prospectus as well as the individuals who authorised the issue of the prospectus on the company's behalf. The defences that are available have been standardised; and
  - (e) *Prospectus required for some sales of securities.* The Bill provides that a prospectus is required (subject to certain exceptions) where there is a sale of shares made by a person who controls the company or where a company issues shares without a prospectus for on-sale and the shares are subsequently on-sold.
- 4.27 *Part 27 deals with Debentures.* As noted, debentures are now included within the broader definition of 'securities' for the purposes of the Bill (including prospectus requirements). Before a company makes an offer of debentures requiring disclosure to investors, the company must also enter into a trust deed and appoint a trustee to protect the interests of debenture holders.

4.28 The concept of managed investment schemes is introduced in Part 28. The Unit Trusts Act (Cap. 228) is to be repealed by the Bill and future managed investment schemes and unit trusts will be regulated under the Bill. Of particular note are the following:

- (a) *What is a managed investment scheme.* The expression includes interests in unit trusts and other common enterprises where funds made available by a number of investors are pooled and the investors do not have day to day control over their funds. There are a number of exceptions to the definition including insurance policies, interests in credit unions and friendly societies and village soli investments;
- (b) *Reserve Bank approval required.* The approval of the Reserve Bank is required for the formation of any managed investment scheme;
- (c) *Manager and Trustee.* Every managed investment scheme must have a manager and a trustee. The provisions regulate who can be a manager and a trustee;
- (d) *Scheme deed.* Every managed investment scheme must have a scheme deed, the terms of which must be approved by the Reserve Bank and lodged with the Registrar; and
- (e) *Prospectus rules apply.* As noted above, the introduction of the notion of 'securities' in the Bill (which includes an interest in a managed investment scheme) means that the same prospectus and disclosure requirements that apply in relation to offers of shares, also apply to issues of units in unit trusts and other managed investment schemes to the public.

4.29 Part 29 contains provisions relating to the holding of meetings of members of managed investment schemes. Broadly these provisions follow those applying to the holding of company meetings.

4.30 Part 30 deals with the keeping of minutes of managed investment scheme members' meetings and members' rights of access to those minutes. Again, these provisions closely follow those applying to minutes of company members' meetings.

4.31 Part 31 deals with registration of company charges. The new provisions have been expanded to address issues not previously considered in the Companies Act (Cap. 247), including —

- (a) *Priorities.* The Bill addresses the relative priorities of chargees where multiple charges are registered over the assets and undertakings of a company (including rules in relation to priority for both registered and unregistered charges); and

- (b) *Variation of charges.* The Bill also now permits the variation of company charges and provides a mechanism for the lodgement of the variation with the Registrar.

4.32 All companies are required to keep written financial records which accurately record and explain all transactions. However, not all companies are required to prepare and lodge prepare and lodge financial statements. Part 32 provides that—

- (a) *Different requirements for different size companies.* Different requirements apply for Small Private Companies (which are private companies where the consolidated revenue for the financial year of the company and its subsidiaries is less than \$5 million), Medium Private Companies (which are private companies where the consolidated revenue for the financial year of the company and its subsidiaries is between \$5 million and \$20 million), Large Private Companies (which are private companies where the consolidated revenue for the financial year of the company and the entities it controls (if any) is more than \$20 million) and public companies.
- (b) *Financial reporting requirements.* The Bill also introduces two forms of financial reporting—
  - (i) Financial Statements—These are full financial statements which are prepared in accordance with accounting standards; and
  - (ii) Proform a Financial Statements—Proform a financial statements contain basic financial information in a prescribed form.
- (c) *Requirements for private companies:* The Bill imposes the following reporting requirements for private companies—
  - (i) Small Private Companies – Will not be required to prepare or lodge financial statements other than—
    - A. Financial Statements, if directed by the Registrar or shareholders with at least 10% of the votes in the company; or
    - B. Proform a Financial Statements if the company was controlled by a foreign company which has not otherwise lodged any financial statements
  - (ii) Medium Private Companies – must prepare and lodge Proforma Financial Statements
  - (iii) Large Private Companies – must prepare and lodge full Financial Statements.

- (d) *Requirements for public companies.* The Bill requires public companies to lodge full Financial Statements;
- (e) *Audit.* Those companies which are required to prepare Financial Statements must have those statements audited; and
- (f) *Directors' report.* All public companies, large private companies and managed investment schemes must also prepare a directors' report (including directors' declaration) for each financial year.

4.33 Part 33 deals with the appointment and registration of auditors. The Ministry of Justice will have oversight of the appointment and registration of auditors and liquidators. The Ministry will be deemed to automatically grant an application for registration as an auditor if the applicant is a chartered accountant who has lodged a current Certificate of Public Practice issued by the Fiji Institute of Accountants. New requirements for the registration of liquidators will not come into effect for 12 months after commencement of the new Act.

4.34 Part 34 sets out procedures for the appointment, resignation and removal of auditors by a company.

4.35 Part 35 sets out certain requirements in relation to the appointment of the liquidator to a company.

4.36 Part 36 deals with schemes of arrangement and corporate reconstructions.

4.37 Part 37 deals with the appointment of receivers and managers. Of note are the following—

- (a) there is a requirement that receivers must take all reasonable steps to sell any property, over which they have control, for market value (if the property has a market value) or otherwise for the best price that is reasonably obtainable having regard to the existing circumstances; and
- (b) the legislation did not previously address the position where there is a concurrent liquidation and receivership. The Bill provides that in that circumstance, receivers may carry on the business of the company with the approval of the liquidator or with the approval of the court. The receiver carries on the business as agent for the company but cannot incur any debts which may be provable in the liquidation.

4.38 Part 38 deals with winding up. Under the Bill:

- (a) *Winding up for oppressive conduct.* A court may make an order for a company to be wound up if the company's affairs are being conducted in a manner contrary to the interests of the members as a whole or are oppressive, unfairly prejudicial, or unfairly discriminatory to any member;



- (b) *Unable to pay debts.* A company can also be wound up where it is unable to pay its debts. Under the Bill, there are four (rebuttable) circumstances where a company is deemed to be unable to pay its debts and is therefore insolvent—
- (i) when a statutory demand is served for an amount of \$10,000 or more and three weeks expires without payment;
  - (ii) when a judgment, decree or order of any court is made in favour of a creditor of the company and it is unsatisfied in whole or in part;
  - (iii) when a receiver or receiver and manager is appointed, under a power contained in an instrument relating to a floating charge, for the purpose of enforcing the charge; or
  - (iv) if it is proved to the satisfaction of the Court that the company is unable to pay its debts;
- (c) *Expedition determination of winding up applications.* Previously, there was no time limit by which an application or petition for winding up needed to be determined. In order to avoid protracted litigation, the Bill provides that an application for winding up must be concluded within 6 months after it is made;
- (d) *Joint and several appointments.* More than one liquidator can be appointed to a company or managed investment scheme and any function or power of a liquidator can be performed or exercised by either or both of them;
- (e) *Void charges.* The Bill provides that a registrable charge will be void against a liquidator unless lodged within 42 days of the date of its creation or at least 6 months before a winding up application is presented to the court. A charge given in favour of a company officer, where any step is taken to enforce the charge within 6 months after its creation without the leave of the court, will also be void; and
- (f) *Other clarifications.* The part clarifies the provisions of the Companies Act (Cap. 247) in a number of other areas—
- (i) the priority of payment of debts in the event of winding up;
  - (ii) the circumstances in which a company is deemed to give unfair preference to a creditor;
  - (iii) when a transaction may be an “uncommercial transaction” or “insolvent transaction”;
  - (iv) when loans to a company are unfair;

- (v) when director-related transactions are unreasonable; and
- (vi) the circumstances in which a transaction is voidable and the orders a court may make as a consequence.

4.39 Part 39 deals with winding up by the Court and Part 40 deals with voluntary winding up.

4.40 Part 41 provides a mechanism for a company which has no liabilities and less than \$1000 in assets to deregister without going through the more costly winding up process. It also provides a process for the Registrar to reinstate deregistered companies in certain circumstances.

4.41 Part 42 introduces an offence for insider trading. Under this Part, a person who has “inside information” is prohibited from applying for, acquiring or disposing of listed securities or procuring another person to do so or communicating inside information to another person when the insider knows that the other person will be likely to trade in the listed securities.

4.42 Part 43 deals with offences under the Bill and imposes penalties for offences. To summarise —

- (a) *Offences.* A person who does something which is prohibited by the Bill, does not do something which is required by the Bill or otherwise contravenes a provision of the Bill is guilty of an offence. Maximum penalties for each offence are set out in Schedule 6 to the Bill;
- (b) *Penalty.* Schedule 6 specifies the penalty to be imposed for each offence.
- (c) *Offences by companies.* In addition, where a company is convicted of an offence under the Bill, the penalty that the court may impose is a fine not exceeding five times the maximum amount that the Court could otherwise impose as a penalty for that offence;
- (d) *Penalty notices.* The Bill also allows the Registrar to issue penalty notices to persons the Registrar believes have committed an offence. This will allow for alleged offences to be resolved without court proceedings if the person to whom the penalty notice is issued arranges for payment of the penalty specified in the penalty notice and attends to any action which the person failed to do if the alleged offence involved the failure to do a particular act; and
- (e) *Conduct leading to imprisonment.* There are six provisions for which contravention may result in imprisonment. Those provisions relate to —
  - (i) officers breaching their duties where the breach was reckless or intentionally dishonest and where officers failed to exercise their powers and discharge their duties in good faith in the best interests of the company or for a proper purpose;

- (ii) officers dishonestly using their position or any information they have obtained because they are or have been an officer of a company;
- (iii) falsification of financial records or books;
- (iv) fraud by officers of companies which have gone into liquidation;
- (v) officers failing to account for loss of a company's property following winding up if there is a dishonest concealment of material facts; and
- (vi) failure to keep proper books at any time during the period of 2 years immediately preceding the commencement of the winding up.

4.43 Part 44 confers investigative powers on both the Reserve Bank (in respect of those provisions of the Bill which it administers) and the Registrar (in respect of the remainder of the Bill).

4.44 Part 45 deals with a number of general matters including in relation to fees, regulation making powers and books and registers.

4.45 Part 46 contains a number of transitional provisions, which continue the incorporation of all existing companies and business names as well as all existing registrations, licences and approvals. The provisions also continue the appointments of existing company officers and the nomination of registered offices, while ensuring that company meetings called under the old law can lawfully proceed under the new law. They also assist with transition arrangements for some of the new provisions, such as those abolishing memoranda of association, par value of shares, authorised share capital, share premium accounts and bearer shares.

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