



REPUBLIC OF NAURU

Corporations Act 1972

As in force from 15 April 2011

This compilation comprises Act No. 5 of 1972 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 18 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

Corporations Act 1972

An Act to provide for the incorporation and administration of corporations

PART I — PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the *Corporations Act 1972*.
- (2) This Part and Parts XI and XII of this Act shall come into force on the day upon which this Act becomes law.
- (3) The other provisions of this Act shall come into force on a date or dates to be notified by the Minister in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires or the contrary intention appears:

'annual return' means the annual return required to be made by a corporation under the provisions of section 133 of this Act;

'articles' means articles of incorporation;

'audit period' means the period in respect of which any profit and loss account of the corporation is made up and, when used in relation to the appointment of an auditor, means a period expiring on the 30th day of June next after the expiry of the preceding audit period or, if there be no preceding audit period, a period expiring on the 30th day of June next after the appointment of the auditor;

'board' means the board of directors of a corporation or a foreign corporation;

'books' includes accounts, deeds, writings, invoices and documents;

'borrowing corporation' means a corporation that is or will be under a liability, whether or not such liability is present or future, to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation;

'branch register' means a branch register of members of a corporation kept in pursuance of section 132 of this Act;

'capital surplus' means the entire surplus of a corporation other than its earned surplus;

'certified' means certified to be a particular document or to be a true copy thereof;

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

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

'creditor' means a person whose debt or claim is admissible against the corporation under section 175 of this Act and, in respect of the proof of debts or claims, includes a person seeking to prove that his claim is so admissible;

'debenture' includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not;

'director' means any person occupying the position of director of a corporation by whatever name called;

'document' includes summons, order and other legal process, and notice and register;

'earned surplus' means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation or from the latest date when a deficit was eliminated, after deducting subsequent distributions to shareholders and transfers made out of earned surplus account and shall include also any portion of surplus allocated to earned surplus account in mergers, consolidations or acquisitions of all or substantially all of the outstanding

shares or property or assets of another corporation, whether incorporated in Nauru or not;

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

'foreign corporation' means:

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

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

'insolvent' means unable to pay debts as they become due;

'issued capital' means, at any particular time, the sum of the par value of all shares of the corporation that have been issued;

'Nauruan corporation' means a corporation of which none of the shares is a bearer share, which does not issue any debenture to which the provisions of subsection (12) of section 66 of this Act relate and of which all shares issued are held beneficially by one or more Nauruan citizens and by no other person or persons and are not subject to any options to purchase them;

'nominee corporation' means a corporation or a foreign corporation of which the whole or a part of the business is to hold registered in its name shares or debentures in which it has no beneficial interest on behalf of another person who has the power, subject only to any lien of such corporation or foreign corporation for its costs, charges and disbursements in respect of those shares or debentures, to direct such corporation or foreign corporation to transfer those shares or debentures to himself absolutely, such person himself not being a trustee or nominee, and the business of which does not, save as

aforesaid, include undertaking or offering to undertake any of the duties of a trustee;

'officer', in relation to a corporation, includes:

- (a) any director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under the power contained in any instrument; and
- (c) any liquidator of a corporation appointed in a voluntary winding-up,

but does not include a liquidator appointed in a compulsory winding-up;

'official liquidator' means a person appointed to be such under the provisions of section 10 of this Act;

'person' includes a corporation and a foreign corporation whether incorporated under this Act or otherwise;

'printing' includes typewriting and any duplication thereof not less legible and permanent than the original;

'profit and loss account' includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;

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

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

'registered corporation agent' means a person appointed and registered as such under the provisions of section 8 of this Act;

'registered corporation auditor' means a person appointed to be such under the provisions of section 9 of this Act;

'registered corporation broker' means a person appointed to be such under the provisions of section 11 of this Act;

'registered director' means a person appointed to be such under the provisions of subsection (12) of section 103 of this Act;

'registered secretary' means a person appointed to be such under the provisions of subsection (1) of section 110 of this Act;

'resident secretary' means the registered secretary appointed by a corporation to be its resident secretary under the provisions of section 110 of this Act;

'registered trustee corporation' means a corporation appointed to be such under the provisions of section 73 of this Act;

'surplus' means the excess of the assets of a corporation over its issued capital;

'the Authority' means the Nauru Government Commercial Authority established by section 7 of this Act;

'the Court' means the District Court;

'the Registrar' means the Registrar of Corporations appointed under section 6 of this Act;

'trustee corporation' means a corporation which as a whole or a part of its business undertakes or offers to undertake all or any of the duties of a trustee, such business not being limited to undertaking or offering to undertake only the duties which a nominee corporation may undertake as its business as such.

3 Transitional provisions

- (1) Where any company has been incorporated prior to the commencement of this Part and has not been dissolved, it shall continue in existence for not more than one year after such commencement and where any foreign company has been registered prior to the commencement of this Part and has not ceased to be so registered since the last occasion on which it was registered the registration shall continue to have effect for not more than one year after such commencement:

Provided that where any winding-up of such a company or foreign company has been commenced while it is continuing in

existence and subject to the written law under which it was incorporated or registered, such winding-up shall be completed under that written law.

- (2) For such time as a company continues in existence, or the registration of a foreign company continues to have effect, under the provisions of this section the company, or the foreign company, shall be subject to the written law under which it was incorporated or registered, as the case may be.
- (3) A company which continues in existence, and a foreign company of which the registration continues to have effect, under the provisions of this section may apply within one year after the commencement of this Part to be registered as a corporation or foreign corporation under this Act and, subject to the provisions of section 248, shall, upon payment of the prescribed fees, be so registered and shall thereafter be deemed for all purposes to have been incorporated or registered hereunder.
- (4) Where any company continued in existence by this section has not been registered under the provisions of the last preceding subsection within one year of the commencement of this Part, it shall be deemed to have ceased to carry on business or be in operation and the provisions of Division 8 of Part IX shall apply as though it were a corporation incorporated under this Act.
- (5) Where any foreign company the registration of which has continued to have effect under the provisions of this section has not been registered under the provisions of subsection (4) within one year of the commencement of this Part, the Registrar shall send to such foreign company a notice requiring it so to register within sixty days and, if it fails so to register within that period, it shall be deemed to have given notice that it has ceased to have a place of business in the Republic and has ceased to carry on business in the Republic and it shall further be deemed to be no longer registered in the Republic.
- (6) Every reference in any written law to a company or a foreign company shall be deemed to be a reference to a corporation incorporated or registered, or a foreign corporation registered, under the provisions of this Act, as the case may be.
- (7) No corporation which may be incorporated as a corporation under this Act shall from the commencement of this Act be incorporated as a company under the provisions of any earlier written law unless such written law relates only to such corporation.

4 Related corporations

- (1) For the purpose of this Act and the regulations, a corporation shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another corporation, if:
- (a) that other corporation:
 - (i) controls the composition of the board of directors of the first-mentioned corporation;
 - (ii) controls more than half of the voting power of the first-mentioned corporation; or
 - (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.
- (2) For the purposes of subsection (1) of this section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors and, for the purposes of this provision, that other corporation shall be deemed to have power to make such an appointment if:
- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or
 - (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.
- (3) In determining whether one corporation is a subsidiary of another corporation:
- (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

- (b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable:
 - (i) by any person as a nominee for that other corporation, except where that other corporation is concerned only in a fiduciary capacity; or
 - (ii) by, or by a nominee for, a subsidiary of that other corporation, but being a subsidiary which is concerned only in a fiduciary capacity;

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

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and
 - (d) any shares held or power exercisable by or by a nominee for, that other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c) of this subsection, shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (4) A reference in this Act or the regulations to the parent corporation of a corporation shall be read as a reference to a corporation of which the last-mentioned corporation is a subsidiary.
- (5) Where a corporation:
- (a) is the parent corporation of another corporation;
 - (b) is a subsidiary of another corporation; or
 - (c) is a subsidiary of the parent corporation of another corporation;

that first mentioned corporation and that other corporation shall for the purposes of this Act and the regulations be deemed to be related to each other and to be related to every other corporation so related to either of them or related directly, or by

a series of such relationships, to any other such related corporation.

5 Purposes and licenses

- (1) Corporations may be incorporated for any lawful purpose or purposes except for the purpose of carrying on the businesses of banking and acting as a trustee corporation and a nominee corporation, or any of such businesses, otherwise than under, and in accordance with the conditions of, a licence issued to that corporation by the Minister under this section.
- (2) Subject to the provisions of subsection (4) of this section, a corporation incorporated under this Act, unless restricted by its articles, may carry on any businesses which may lawfully be carried on by an individual but shall not carry on the business of banking, trustee corporation or nominee corporation, or any of such businesses, except under, and in accordance with the conditions of, a licence issued to that corporation by the Minister under this section.
- (3) A corporation incorporated under this Act may be either a trading corporation or a holding corporation.
- (4) The Minister may by notice in the Gazette restrict any corporation or class of corporations from carrying on any specified business in Nauru and may by notice in the Gazette impose conditions subject to which any specified business may be carried on by any corporation or class of corporations.
- (5) The Minister may grant licences, if he thinks fit, to corporations and foreign corporations authorising them to carry on the businesses, of trustee corporation or nominee corporation, or any of such businesses, and in any licence may impose conditions subject to which the business or businesses to which it relates may be carried on.
- (6) A licence granted under the last preceding subsection shall be valid for such period as the Minister determines at the time of granting it but may be rescinded by the Minister at any time if any of its conditions are breached by the licensee.
- (7) A licence granted under subsection (5) of this section may be expressed to be an exclusive licence; where any such licence is granted, no other licence shall be granted in respect of the business or businesses to which the first-mentioned licence relates while that first-mentioned licence continues in force,

unless the licensee of that first-mentioned licence consents to such other licence being granted.

- (8) At the time of granting a licence under subsection (5) of this section the Minister may, if he thinks fit, impose a fee to be paid by the licensee for such licence; such fee may be a specified amount or an amount to be determined in relation to the gross income, gross profits or nett profits of the licensee or otherwise and shall be payable on such date or dates as the Minister sets at the time of granting the licence.
- (9) The Minister:
- (a) in granting or refusing to grant a licence under the provisions of this section;
 - (b) in imposing under this section any condition subject to which a specified business may be carried on by a corporation or a class of corporations; and
 - (c) in restricting a corporation or a class of corporations from carrying on any specified business in Nauru,

shall not be required to act judicially and the grant, refusal, imposition of a condition or restriction shall not be subject to challenge in any Court.

PART II — ADMINISTRATION OF ACT

6 Registrar of Corporations

- (1) The President shall appoint a Registrar of Corporations to have the charge and control of the Corporations Office and to carry out the duties and functions vested in him by or under this or any other Act.
- (2) The President may appoint such Deputy Registrars of Corporations and other officers as are required for the purposes of this Act.
- (3) Anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any such Deputy Registrar and shall be as valid and effectual as if done or signed by the Registrar.

- (4) All Courts, judges, and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar and of any Deputy Registrar.
- (5) For the purpose of ascertaining whether a corporation is complying with the provisions of this Act the Registrar or any person authorised by him may inspect any book, minute book, register or record required by or under this Act to be kept by the corporation.
- (6) A person who, except for the purposes of this Act, or except in the course of any criminal proceedings, makes a record of, divulges or communicates to any other person any information which he has acquired by reason of such inspection shall be guilty of an offence against this Act.
- (7) A corporation or any officer thereof shall, on being required by the Registrar or a person authorised by the Registrar, produce any such book, register or record.
- (8) A corporation or any officer thereof shall not obstruct or hinder the Registrar or person so authorised while exercising any of the powers referred to in subsection (5) of this section.
- (9) There shall be paid to the Registrar such fees as are prescribed.

7 Nauru Government Commercial Authority

- (1) There shall be an Authority established by the Government of the Republic to be known as 'The Nauru Government Commercial Authority'.
- (2) The Authority is hereby established and shall be administered by a Commissioner who shall be appointed as such by the Cabinet¹ and who shall, subject to this Act, have power to administer the Authority. The Chief Secretary may direct any public officer to do work for the Authority as instructed by the Commissioner or the Acting Commissioner.

¹ Section 4 of the *Corporation (Amendment) Act 1975* provides as follows:
'Section 7 of the principal Act is amended by deleting from subsection (2) thereof the words "the Chief Secretary with the approval of the Cabinet" and by inserting in lieu thereof the words "the Minister".'
The amendment is unincorporable, the words 'appointed by the Chief Secretary with the approval of the Cabinet' having been replaced by the words 'appointed as such by the Cabinet' by the *Corporation (Amendment) Act 1973*.

- (3) In the event that there is at any time no Commissioner or the Commissioner is absent from Nauru or unable to perform his duties for any reason the Registrar shall, until the appointment of a Commissioner or until the Commissioner returns to Nauru or is able to perform his duties as the case may be, be Acting Commissioner. An Acting Commissioner shall have all the powers and may perform all the duties of the Commissioner.
- (4) The functions of the Authority shall be:
 - (a) to receive moneys sent to it;
 - (b) to pay out of amounts received by the Authority amounts payable to the Registrar or payable to the Court or to any other person or corporation pursuant to the provisions of this Act or in relation to the incorporation or proposed incorporation or operation of a corporation in relation to which it has received a request of the kind referred to in paragraph (a) of subsection (10) of section 15;
 - (c) to enter into and carry out the transactions referred to in subsections (10) to (23) inclusive of section 15; and
 - (d) such other functions related to the publicising and promoting of the commercial facilities of Nauru and to the regulation of commercial activity in Nauru as may be provided for by law or directed by the Cabinet.
- (5) For the purpose of performing its functions the Authority shall have power to establish and maintain bank accounts and draw, accept and endorse bills of exchange, cheques and promissory notes and to cash and receive money orders, drafts, letters of credit and other documentary credits and shall be entitled to hold and transfer securities and enter into contracts not involving payments or the assumption of liabilities in excess of \$500 or such other amount as the Regulations provide in any one case, and shall have power to do such other acts and things as are incidental to the performance of its functions.
- (6) The Authority shall keep accounts in such form as Cabinet approves and the accounts of the Authority shall be subject to inspection and audit at least once yearly by an auditor appointed by Cabinet and the auditor shall report to Cabinet the result of each inspection and audit.
- (7) The Authority shall have an official seal the affixation of which shall be attested by the Commissioner or Acting Commissioner and all Courts, judges and persons acting judicially shall take

judicial notice of the seal of the Authority affixed to any document and shall presume that it was duly affixed.

- (8) The Authority shall be capable of entering into contracts and of suing in its said name.
- (9) No action shall lie against the Authority or any officer of the Authority in respect of anything done or omitted in exercise or purported exercise of its or his functions or duties under this Act.
- (10) The expenses of the Authority shall be paid from, and be a charge upon, the Treasury Fund.
- (11) Regulations may be made providing for the employment of officers of the Authority, the delegation of the powers and functions of the Authority and regulating the manner in which the Authority carries out its functions.

8 Registered corporation agents

- (1) The Minister may, by notice in the Gazette, appoint any person or corporation to be a registered corporation agent.
- (2) The Minister may revoke any appointment made under the last preceding subsection.
- (3) No person or corporation shall act or hold himself or itself out as a registered corporation agent unless appointed by the Minister as a registered corporation agent under this Act.
- (4) The Registrar shall keep a register in which shall be entered the names, addresses and dates of appointment of all registered corporation agents and shall permit inspection of such register without fee.
- (5) No document required or permitted to be lodged with or filed by the Registrar under the provisions of this Act shall be lodged with the Registrar except through a registered corporation agent.
- (6) No application to the Registrar for any certificate issued under this Act or for any extract or copy of any document filed by the Registrar shall be made otherwise than through a registered corporation agent:

Provided that the provisions of this subsection shall not apply where an application is made by a member of a corporation who

is not a director or officer of that corporation or of a related corporation for his own personal use.

9 Registered corporation auditors

- (1) The Minister may, by notice in the Gazette, appoint any person or corporation to be a registered corporation auditor.
- (2) No person or corporation shall be appointed, or perform the duties of, auditor of a corporation unless he has been appointed to be a registered corporation auditor.
- (3) The Minister may revoke any appointment made under subsection (1) of this section.
- (4) The Registrar shall keep a register of registered corporation auditors.
- (5) Until otherwise prescribed by regulation the annual fee for registration as a registered corporation auditor shall be the sum of ten dollars.
- (6) A person or corporation shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any corporation and shall not prepare for or on behalf of a corporation any report required by this Act to be prepared by a registered corporation auditor:
 - (a) if he or it is not at the time of his or its so acting or preparing such report a registered corporation auditor;
 - (b) if he, it or any corporation related to it is indebted to the corporation or a related corporation in an amount exceeding five thousand dollars;
 - (c) if he, it or any corporation related to it is an officer of the corporation;
 - (d) if he or it or any corporation related to it is:
 - (i) a partner, employer or employee of an officer of the corporation; or
 - (ii) a partner or employee of an employee of an officer of the corporation; or
 - (e) if he is:
 - (i) a spouse of an officer of the corporation; or

- (ii) a spouse of an employee of an officer of the corporation.
- (7) For the purposes of subsection (6) of this section, a person or corporation shall be deemed to be an officer of a corporation if he or it is an officer of a corporation that is deemed to be related to the corporation by virtue of subsection (5) of section 4 or he has, at any time within the preceding period of twelve months, been an officer or promoter of the corporation or of such other corporation.
- (8) For the purposes of this section, a person or corporation shall not be deemed to be an officer by reason only of his or its having been appointed as auditor of a corporation.
- (9) No corporation or person shall appoint a person or corporation as auditor of a corporation unless the person or corporation to be appointed auditor has prior to such appointment consented in writing to act as such auditor.
- (10) The Cabinet may make regulations requiring registered corporation auditors to insure against their liabilities as auditors of corporations.

10 Official liquidators

- (1) For the purpose of proceedings in winding up corporations the Minister may, by notice in the Gazette, appoint any person or corporation to be an official liquidator.
- (2) The Minister may revoke any appointment made under the last preceding subsection.
- (3) No person or corporation shall be appointed or act as liquidator of a corporation:
 - (a) if he or it is not an official liquidator;
 - (b) if he, it or any corporation related to it is indebted to the corporation or to a corporation which is deemed to be related to that corporation by virtue of subsection (5) of section 4 in an amount exceeding \$1,000;
 - (c) if he or it has not prior to the appointment consented to be appointed.
- (4) The Registrar shall keep a register of official liquidators.

- (5) Where an official liquidator is appointed to be a liquidator of a corporation, whether by the Court or in a voluntary winding-up, he or it shall forthwith notify the Registrar in writing of any interest which he, it or any corporation related to it has in the corporation as an officer or employee of the corporation or as a partner, employee or employer of an officer of the corporation or as a partner or employee of an employee of the corporation.
- (6) Nothing in this section shall affect any appointment of a liquidator made before the commencement of this Act.

11 Corporation brokers

- (1) The Minister may, by notice in the Gazette, appoint any person or corporation to be a registered corporation broker and may revoke any appointment so made.
- (2) No person or corporation shall act as a corporation broker unless he or it is a registered corporation broker.
- (3) The Registrar shall keep a register of corporation brokers.
- (4) The Cabinet may make regulations requiring registered corporation brokers to insure against their liabilities as such.

12 Registers

- (1) The Registrar may, subject to this Act and the regulations, keep such other registers as he considers necessary and in such form as he thinks fit.
- (2) Any person may, on payment of the prescribed fee:
 - (a) inspect any document filed or lodged with the Registrar relating to a corporation; or
 - (b) require any certificate issued under this Act or a copy of or extract from any document kept by the Registrar in relation to a corporation to be given or certified by the Registrar.
- (4) A copy of or extract from any document filed by the Registrar certified to be a true copy or extract under the hand and seal of the Registrar shall in any proceedings be as admissible in evidence as if it were the original document or the part thereof so extracted.

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

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

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

(6) If the Registrar is of opinion that any document lodged with him:

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

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

(7) If a corporation or person, having been in default in complying with:

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

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

- (8) Nothing in this section shall prejudice the operation of any enactment or other section of this Act imposing penalties on a corporation or its officers or such person in respect of any such default as aforesaid.

13 Re-lodging of lost documents

- (1) If, in the case of any corporation, the memorandum or articles or any other document relating to the corporation lodged with or filed by the Registrar has been lost or destroyed, the corporation may lodge an application with the Registrar for leave to lodge a copy of the document as originally lodged or filed, as the case may be.
- (2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as he thinks fit.
- (3) The Registrar upon being satisfied:
- (a) that the original document has been lost or destroyed;
 - (b) of the date of the lodging thereof with, or the filing thereof by, the Registrar;
 - (c) that a copy of such document produced to the Registrar is a correct copy; and
 - (d) that the proper fee payable on lodging the original document has been paid;

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

- (4) Upon the lodgement, the copy for all purposes shall from such date as is mentioned in the certificate as the date of the lodging or filing, as the case may be, of the original with the Registrar have the same force and effect as the original.
- (5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and shall be registered by him, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by such variation or rescission.

- (6) No fee shall be payable to the Registrar upon the lodging of a document lodged in pursuance of subsection (3) of this section.

PART III — CONSTITUTION OF CORPORATIONS

Division 1 — Incorporation

14 Formation of corporations

- (1) Subject to this Act, the Authority or any one or more persons or corporations may by subscribing its, his or their name or names to a memorandum and complying with the requirements as to registration form a holding corporation for any lawful purpose.
- (2) Subject to this Act, any two or more persons or corporations may by subscribing their names to a memorandum and complying with the requirements as to registration form a trading corporation for any lawful purpose.
- (3) If a subscriber to a memorandum is a corporation or the Authority, the memorandum may be subscribed by that corporation or the Authority under its seal or by some person duly authorised on its behalf.
- (4) Every corporation incorporated under this Act shall be a corporation limited by shares.

15 Registration and incorporation

- (1) Subject to the provisions of subsections (10) to (23) of this section, a person desiring the incorporation of a corporation shall cause to be lodged with the Registrar the memorandum and articles, if any, of the proposed corporation together with an unsigned true copy thereof and the other documents required to be lodged by or under this Act, and the Registrar upon payment of the prescribed fees shall, subject to this Act, register the corporation by filing the memorandum and articles, if any.
- (2) The Registrar may, if he thinks fit, require a certificate by the registered corporation agent lodging the documents stating that all or any of the requirements of this Act have been complied with and the Registrar may accept such certificate as sufficient evidence of such compliance.

- (3) On the filing of the memorandum the Registrar shall certify under his hand and seal that the corporation is, on and from the date specified in the certificate, incorporated and that the corporation is:
- (a) a trading corporation; or
 - (b) a holding corporation;
- as the case may be and shall deliver his certificate to the registered corporation agent who lodged the documents or as such agent in writing requests.
- (4) The first certificate of incorporation shall be valid for twelve months from the date of incorporation and shall be renewable thereafter for further periods of twelve months from each anniversary of the date of incorporation upon due lodgement of the annual return of the corporation and payment of the prescribed fee therefor and such renewal certificate shall be issued by the Registrar within fourteen days after the due lodgement of the annual return and payment of such fee and shall be delivered to the registered corporation agent lodging the annual return or as such agent in writing requests.
- (5) Every certificate of incorporation shall show on its face the date of its expiry, and, if articles are filed, a notation to that effect.
- (6) Any director or officer of a corporation who permits a corporation to carry on business after the expiry of its certificate of incorporation and before a current certificate of incorporation has been issued shall, unless the Minister otherwise directs, be personally liable for the debts and liabilities of the corporation incurred during such period as the corporation carries on business without a current certificate of incorporation.
- (7) On and from the date of incorporation specified in the certificate of incorporation but subject to this Act, the subscriber or subscribers to the memorandum, while they remain members together with such other persons as may from time to time become members of the corporation, shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of a corporation and of suing and being sued and having perpetual succession and a corporate seal but with such liability on the part of the members to contribute to the assets of the corporation in the event of its being wound up as is provided by this Act.
- (8) A certificate of incorporation under the hand and seal of the Registrar shall be conclusive evidence that all the requirements

of this Act in respect of incorporation and of matters precedent and incidental thereto have been complied with and that the corporation referred to therein was duly incorporated under this Act.

- (9) Except where a corporation is incorporated by the Authority pursuant to a direction under subsection (10) of this section, every subscriber to the memorandum shall upon its incorporation be a member of the corporation and on the incorporation of the corporation:
- (i) if the articles so permit and the subscriber so desires and has paid up in full the nominal value of his shares, he shall be issued with a share warrant or warrants for the shares agreed to be taken by him in the memorandum and the appropriate entry shall be made in its register of members;
 - (ii) in any other case, without formal allotment of shares, he shall be entered as a member in its register of members in respect of the share or shares subscribed for by him in the memorandum.
- (10) A person desiring the incorporation of a holding corporation may, if he so desires, cause to be delivered to the Authority an unsigned memorandum of the proposed corporation together with an unsigned true copy thereof and together with:
- (a) a request in writing signed by him that no shares or share warrants be issued to him and that he be not a member of the corporation, and that one share be issued on incorporation to the Authority;
 - (b) an amount sufficient to pay:
 - (i) the fees payable on lodgement of the documents to be lodged for incorporation of the corporation; and
 - (ii) the fees payable to a registered corporation agent, a registered director and a resident secretary in respect of their services in and about the incorporation of the corporation and the issue of the share to be issued pursuant to the request in paragraph (a) above and any debenture to be issued pursuant to subsection (14) of this section; and
 - (c) the nomination, if any, made for the purpose of subsection (17).

- (11) The Authority, if it sees fit, upon receipt of the documents and payments referred to in subsection (10) shall seal the memorandum for the incorporation of the corporation and shall cause the memorandum to be lodged with the Registrar through a registered corporation agent together with the prescribed fees therefor and at the same time shall send to the registered corporation agent an appointment in writing in the form required by Table B and effective for the purpose of appointing as the only director of the corporation a registered director and shall pay to the registered corporation agent its fee therefor and any fees payable to the registered director and to a resident secretary for the performance of their duties as such in and about the incorporation of the corporation and the issue of the share to be issued pursuant to the request referred to in paragraph (a) of subsection (10).
- (12) Upon the incorporation of the corporation, the Authority shall be the only member of the corporation and, without formal allotment of its share, the Authority shall be entered as a member in the register of members of the corporation in respect of the share referred to in paragraph (a) of subsection (10) and such share shall be deemed to be fully paid up and shall be issued to the Authority.
- (13) Unless there be delivered to the Authority with the documents referred to in subsection (10) a written request that a debenture should not be issued, the corporation shall, as soon as convenient after incorporation, prepare a form of bearer debenture which shall incorporate the provisions set forth in Table C to this Act and shall cause the same to be signed by a person appointed by the registered director, which form of bearer debenture shall be expressed to secure to the bearer a sum equal to the amounts paid by the Authority for the fees of the registered director and resident secretary expressed in Australian dollars, and shall thereupon post or deliver the said form of bearer debenture with a form of receipt attached to the person who signed the request referred to in subsection (10) or as he directs. The said form of bearer debenture shall not take effect as a debenture and will give rise to no rights against the corporation until the corporation receives at its registered office in Nauru a receipt of the kind and signed in the manner referred to in the next following subsection.
- (14) Upon a receipt for the form of bearer debenture signed for or on behalf of the person to whom the same was posted or delivered being received at the registered office of the corporation in Nauru, the same shall be entered in the records of the corporation and thereupon the corporation shall be deemed to

have resolved to issue the bearer debenture and the same shall thereupon be a specialty debt, due from the corporation to the bearer, situate in the place where the bearer debenture is. A receipt purporting to be signed as aforesaid shall be *prima facie* evidence that it was so signed.

- (15) Where a request of the kind referred to in paragraph (1) of subsection (10) has been given to the Authority, the registered director appointed pursuant to subsection (11) shall not be removed and no additional director of the corporation shall be appointed until the share referred to in paragraph (a) of subsection (10) has been issued and the debenture, if any, to be issued pursuant to subsection (14) has been issued:

Provided that the Authority may, notwithstanding anything contained in the articles, until the share referred to in paragraph (a) of subsection (10) has been issued and the debenture, if any, to be issued pursuant to subsection (14) has been issued appoint a registered director in substitution for the registered director so appointed and may remove any registered director.

- (16) Where a request of the kind referred to in paragraph (a) of subsection (10) has been made to the Authority, the person making such request shall not have any right to have a corporation incorporated or to have any shares or debentures issued and it shall be in the absolute discretion of the Authority whether upon receiving such request it acts in accordance with the provisions of subsection (11) of this section or not:

Provided that, if the Authority neglects or refuses to act in accordance with the provisions of that subsection, the Authority shall, after deducting such costs, charges and expenses as in its discretion are properly attributable to its consideration of such request, repay the balance to the person making such request or as he directs.

- (17) (a) Where a share is issued to the Authority under the provisions of this section, such share shall, notwithstanding any provisions of the articles, be and be deemed to be forfeited to the corporation at the expiration of three months from the date of its incorporation and the corporation shall cause an entry to that effect to be made in its register of members and the certificate of such share shall be delivered up to the corporation and cancelled;
- (b) In the event of a form of bearer debenture of the kind referred to in subsection (14) of this section not having

been issued or a receipt for such a form, if issued, not being received by the corporation at its registered office in Nauru prior to the forfeiture of the share issued to the Authority, the director or directors of the corporation shall issue to a trustee corporation carrying on business in Nauru one ordinary share, or at the discretion of the director or directors one share of another type or class, by way of gift and without any valuable consideration, and thereupon the said trustee corporation shall be a member of the corporation and its name shall be entered in the register of members and the said trustee corporation shall hold the said share and any income rights and accruals thereto upon trust for the person or persons, if any, nominated in the nomination referred to in paragraph (c) of subsection (10) or, if there is no such nomination for the person who made the request referred to in subsection (10). The trustee corporation shall be entitled to be indemnified out of the assets of the corporation for its reasonable costs and expenses in administering the trusts upon which such share is held and in making payment of such fees and charges payable by the corporation as it sees fit to make on behalf of the corporation;

- (c) Where a person nominated in the nomination referred to in paragraph (c) of subsection (10) has died before the share referred to in the last preceding paragraph is issued to the trustee corporation, then, unless his nomination was conditional upon his being alive at the time of such issue, the trustee corporation shall hold the share and any income rights and accruals thereto upon trust for the executor of his will or the administrator of his estate, as the case may be;
- (d) Where the person nominated in the nomination referred to in paragraph (c) of subsection (10) has died before the share referred to in paragraph (b) of this subsection is issued to the trustee corporation and the nomination was conditional upon his being alive at the time of such issue, then, unless any other person has been nominated to be the beneficiary in his place in the event of his not being alive, the trustee corporation shall hold the shares and any income rights and accruals thereto upon trust for the person who made the nomination or, if that person has died before the share is issued, for the executor of his will or the administrator of his estate, as the case may be;

- (e) Where no nomination of the kind referred to in paragraph (c) of subsection (10) has been made, and the person who made the request referred to in paragraph (a) of subsection (10) has died before the share referred to in paragraph (b) of this subsection is issued to the trustee corporation, the trustee corporation shall hold the share and any income rights and accruals thereto on trust for the executor of the will of such person or for the administrator of his estate as the case may be.
- (18) The Authority shall not be a trustee for the person who made the request referred to in subsection (10) or for the person or persons nominated as aforesaid and no trust shall be constituted by the issue of the share to the Authority under the provisions of this section.
- (19) The Minister shall be the only person entitled to enforce the performance of the obligations of the Authority under the provisions of this section.
- (20) The requests referred to in paragraph (a) of subsection (10) and in subsection (13) and any variation of such requests made under this subsection may be revoked or varied only by the Minister and then only with the consent of the person who made the requests or such person as he nominates for the purpose in such requests.
- (21) Where a request of the kind referred to in paragraph (a) of subsection (10) is made to the Authority, the registered corporation agent through whom the documents relating to that corporation are lodged by the Authority shall be retained and employed by the Authority and not by the person making the request; there shall not be, nor shall there be deemed to be any contract, agreement or arrangement between the registered corporation agent and that person, nor shall the registered corporation agent be, or be deemed to be, the agent of that person.
- (22) Where a request of the kind referred to in paragraph (a) of subsection (10) is made to the Authority for the incorporation of any corporation, no contract, agreement or arrangement in respect of that corporation shall arise, or be deemed to have arisen, between the person making the request and the Authority, notwithstanding that the Authority may incorporate that corporation or make any repayment of the money received from that person nor shall the Authority be, or be deemed to be, the agent of that person in respect of anything done by it as a consequence of the request.

- (23) Where a request of the kind referred to in paragraph (a) of subsection (10) is made in respect of a corporation, no articles shall be filed with the memorandum of that corporation and no articles other than the articles as set out in Table B of the Second Schedule shall be adopted as the articles of the corporation until after the expiration of three months from the date of its incorporation:

Provided that, where by any such request the Authority is specifically requested:

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

such articles being additional to or in substitution for all or any of the articles as set out in the said Table B, the Authority may, if it thinks fit, notwithstanding the provisions of this subsection, lodge such articles with the Registrar at the same time as it lodges the memorandum or at any time within three months of the incorporation of the corporation and such articles shall, notwithstanding the issue of a bearer debenture by the corporation under subsection (13), be, upon the filing thereof and until altered in any manner provided for by this Act, the articles of the corporation.

- (24) After incorporation any person who agrees to become a member of a corporation and whose name is entered into its Register of Members or who becomes the holder of a share warrant shall be a member of the corporation.
- (25) Regulations may be made prescribing the form of documents to be used pursuant to the provisions of this section.

15A Continuation in Nauru of corporation incorporated outside Nauru

- (1) Subject to subsection (6) of this section and to section 247, a corporation incorporated as a company or corporation under the laws of any country other than Nauru, or of any jurisdiction within such a country, may, if it appears to the Registrar to be authorised by the laws of that country or jurisdiction, apply to the Registrar to be registered as being continued in Nauru as if it had been incorporated under this Act.

- (2) Upon application under the preceding subsection, supported by such material as he considers adequate and satisfactory, the Registrar may, if he is satisfied that the consent of such number or proportion of the shareholders, debenture-holders and creditors of the corporation as may be required by the laws of that country or jurisdiction, and the consent of the proper officer of that country or jurisdiction, to such registration has been obtained by the corporation, register such corporation as being so continued and, if so registered, the corporation shall be deemed thereafter to be a corporation incorporated under this Act and domiciled in Nauru:

Provided that no corporation may be registered under this section if:

- (a) its winding-up has commenced;
 - (b) a receiver of its property has been appointed; or
 - (c) there is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted.
- (3) A corporation applying under subsection (1) to be registered in Nauru shall state in its application whether it is seeking to be registered as a trading corporation or a holding corporation. The Registrar shall not register any corporation under this section unless he is satisfied that it would be eligible to be incorporated in Nauru as a corporation of the class in which it seeks to be registered and, if he registers it, he shall register it either as a trading corporation or as a holding corporation.
- (4) The registration of a corporation under this section shall not operate:
- (a) to create a new legal entity;
 - (b) to prejudice or affect the continuity of the corporation;
 - (c) to affect the property of the corporation;
 - (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the corporation or any other person; or
 - (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the corporation or any other person.

- (5) Upon the registration of a corporation under this section:
- (a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the corporation; and
 - (b) so much of its constitution as does not, by virtue of the preceding paragraph, comprise its memorandum of association shall be deemed to be the registered articles of association of the corporation,
- and shall be binding on the corporation and its members accordingly.
- (6) No corporation incorporated by private Act or which could not be incorporated under this Act shall be registered under the preceding subsection.
- (7) A corporation registered under subsection (1) shall pay the same fee for registration as if it were being registered upon incorporation in Nauru and the provisions of regulations relating to the changing of names by companies incorporated under the *Companies Ordinance 1912* of the Territory of Papua in its application to Nauru and registered under section 3 of this Act shall apply *mutatis mutandis* thereto.

16 Requirements as to memorandum

- (1) The memorandum of every corporation shall be printed and divided into numbered paragraphs and dated and shall state:
- (a) the name of the corporation;
 - (b) that the corporation is a trading corporation or a holding corporation, as the case may be;
 - (c) the amount of share capital with which the corporation proposes to be registered and the division thereof into shares of a fixed amount;
 - (d) in the case of a trading corporation the full names and addresses of the subscribers thereto; and
 - (e) that the subscriber or subscribers to the memorandum desire the formation of a corporation and that on incorporation shares of the number and class in the capital

of the corporation set out are to be issued to the subscriber or the respective subscribers.

- (2) Members shall be liable to the corporation for the amount unpaid on their shares but their liability as members is, subject to the provisions of this Act, limited to the amount, if any, unpaid on the shares held by them.

Division 2 — Status and name

17 Powers of corporations

The powers of a corporation shall include, unless expressly excluded or modified by the articles, the powers set forth in the First Schedule, which shall be exercisable in Nauru and elsewhere, and such other powers, if any, as are set out in its articles or granted to it generally or specially by regulations made under this Act.

18 *Ultra vires* transactions

- (1) No act of a corporation, including the entering into of an agreement by the corporation, and no conveyance or transfer of property whether real or personal to or by a corporation shall be invalid by reason only of the fact that the corporation was without capacity or power to do such act or to execute or take such conveyance or transfer.
- (2) Any such lack of capacity or power may be asserted or relied upon only in:
 - (a) proceedings against the corporation by any member of the corporation or, where the corporation has issued debentures secured by a floating charge over all or any of the corporation's property, 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 to transfer of any property to or by the corporation; or
 - (b) any proceedings by the corporation or by any member of the corporation against the present or former officers of the corporation.
- (3) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under paragraph (a) of subsection (2) of this section is being or is to be performed or

made pursuant to any contract to which the corporation is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the corporation or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

19 Names of corporations

- (1) Except with the consent of the Minister, a corporation shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or includes a name, of a kind that the Minister directs the Registrar not to accept for registration.
- (2) A corporation shall have the word 'Corporation' or the word 'Incorporated' or the abbreviation 'Corp.' or 'Inc.' as part of, and at the end of, its name.
- (3) A holding corporation shall have the word 'Holding' or 'Holdings' immediately prior to the word 'Corporation', the word 'Incorporated' or the abbreviation 'Corp.' or 'Inc.' where it last appears in its name as part of its name and a trading corporation shall not have the word 'Holding' or 'Holdings' or any word which might be an abbreviation thereof appearing in its name.
- (4) No description of a corporation shall be deemed inadequate or incorrect by reason of the use of:
 - (a) the abbreviations 'Corp.' or 'Inc.' in lieu of the word 'Corporation' or 'Incorporated' contained in the name of the corporation;
 - (b) the word 'Corporation' or 'Incorporated' in lieu of the abbreviations 'Corp.' or 'Inc.' contained in the name of the corporation; or
 - (c) the symbol '&' in lieu of the word 'and' contained in the name of the corporation or the word 'and' in lieu of the symbol '&' in the name of the corporation.

- (5) A person may lodge with the Registrar an application in the prescribed form for the reservation of a name set out in the application as:
 - (a) the name of any intended corporation; or
 - (b) the name to which a corporation proposes to change its name.
- (6) If the Registrar considers that the application is made *bona fide* and is satisfied that the proposed name is a name by which the intended corporation or the corporation could be registered without contravention of subsection (1) of this section, he shall, upon payment of the prescribed fee, reserve the proposed name for a period of six months from the date of the lodging of the application.
- (7) If, at any time, during the period for which a name is reserved, an application is lodged with the Registrar for an extension of that period and the Registrar is satisfied as to the *bona fides* of the application, he may upon payment of the prescribed fee extend that period for a further period of six months.
- (8) During a period for which a name is reserved, no corporation, person, firm or society, other than the corporation or intended corporation in respect of which the name is reserved, shall be registered under this Act or any other Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.
- (9) The reservation of a name under this section in respect of intended corporation or corporations shall not in itself entitle the intended corporation or corporations to be registered by that name, either originally or on change of name.

20 Change of name

- (1) A corporation may by special resolution and with the approval of the Registrar change its name to a name by which the corporation could be registered without contravention of subsection (1) of section 19.
- (2) If the name of a corporation, whether through inadvertence or otherwise and whether originally or by change of name, is a name by which the corporation could not be registered without contravention of subsection (1) of section 19, the corporation

may by special resolution change its name to a name by which the corporation can be registered without contravention of that section and, if the Registrar so directs, shall so change it within three months after the date of the direction or such longer period as the Registrar allows and, if the corporation fails to comply with such direction, it is guilty of an offence.

- (3) A change of name pursuant to this Act shall not affect the identity of the corporation or any right or obligations of the corporation or render defective any proceedings by or against the corporation; any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.
- (4) Where a corporation changes its name under the provisions of this section, it shall forthwith surrender to the Registrar its certificate of incorporation and the Registrar shall issue a new certificate bearing the corporation's new name, which certificate shall have the same expiry date as that of the certificate surrendered; and the change of name shall take effect only from the date of the issue of the new certificate.

21 Conversion from holding to trading corporation

- (1) A holding corporation may convert to a trading corporation subject to the consent of the Registrar and subject to such conditions as he may impose.
- (2) An application for conversion of a holding corporation to a trading corporation shall be lodged with the Registrar.
- (3) A trading corporation shall not convert into a holding corporation.
- (4) A conversion of a holding corporation into a trading corporation pursuant to the provisions of this section shall not affect the identity of the corporation or any rights or obligations of the corporation or render defective any legal proceedings by or against the corporation, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding any change in the corporation in consequence of its conversion, be continued or commenced by or against it after the conversion.
- (5) Where a holding corporation converts into a trading corporation under the provisions of this section, it shall forthwith surrender to the Registrar its certificate of incorporation and the Registrar

shall issue a new certificate which shall have the same expiry date as that of the certificate surrendered; and the conversion shall take effect only from the date of the issue of the new certificate.

22 Articles of incorporation

- (1) Except where the corporation is incorporated pursuant to a request made to the Authority under subsection (10) of section 15, there may be lodged with the memorandum of a corporation articles of incorporation signed by the subscribers to the memorandum prescribing regulations for the corporation.
- (2) Articles shall be:
 - (a) printed;
 - (b) divided into numbered paragraphs; and
 - (c) signed by each subscriber to the memorandum or, if any subscriber is a corporation, sealed with its corporate seal or signed on its behalf.

23 Adoption of Table 'A' or Table 'B'

- (1) Articles may adopt all or any of the articles contained in Table 'A' of the Second Schedule in the case of a trading corporation or in Table 'B' of the Second Schedule in the case of a holding corporation.
- (2) In the case of a trading corporation if articles are not lodged and filed, or if articles are lodged and filed then insofar as the articles do not exclude or modify the articles contained in Table 'A', the articles in Table 'A' shall so far as applicable be the articles of the corporation in the same manner and to the same extent as if they were contained in articles lodged and filed.
- (3) In the case of a holding corporation, if articles are not lodged and filed, or if articles are lodged and filed then insofar as the articles do not exclude or modify the articles contained in Table 'B', the articles in Table 'B' shall so far as applicable be the articles of the corporation in the same manner and to the same extent as if they were contained in articles lodged and filed.

24 Alteration of articles

- (1) Subject to this Act and in particular subject to the provisions of subsection (23) of section 15, a corporation may by special resolution alter or add to its articles.
- (2) Subject to a copy of such resolution being lodged with the Registrar within one month of its being passed or within such further period as the Registrar may allow and subject to the provisions of this Act, any alteration or addition so made in the articles shall, on and from the date of the special resolution or such later date as is specified in the resolution, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.
- (3) Subject to this section any corporation shall have the power to amend its articles by the adoption of all or any of the articles contained in Table 'A' in the case of a trading corporation or contained in Table 'B' in the case of a holding corporation by reference only to the articles in such table or to the numbers of specified articles contained therein, without being required in the special resolution effecting the amendment to set out the text of the articles so adopted.

25 Effect of memorandum and articles

- (1) Subject to this Act, the memorandum and articles shall when filed bind the corporation and the members thereof, including the holders of share warrants.
- (2) All money payable by any member to the corporation under the memorandum or articles shall be a debt due from him to the corporation and shall be of the nature of a specialty debt situated in Nauru.
- (3) Notwithstanding anything in the articles of a corporation no member of the corporation, unless either before or after the alteration is made he agrees in writing to be bound thereby, shall be bound by an alteration made in the articles after the date on which he became a member so far as the alteration requires him to take or to subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the corporation.

26 Copies of the memorandum and articles

- (1) A corporation on being so required by any member shall send to him a copy of the memorandum and of the articles, if any, subject to payment to the corporation of two dollars or the costs thereof, whichever is the less.
- (2) Where an alteration is made in the memorandum or articles of the corporation, a copy of the memorandum or articles shall not be issued by the corporation after the date of alteration unless:
 - (a) the copy is in accordance with the alteration; or
 - (b) a printed copy of the resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.
- (3) Where an agreement required to be lodged with the Registrar under section 122 affects the articles of a corporation, a copy of the articles shall not be issued by the corporation after the agreement is entered into unless a copy of the agreement is annexed to the copy of the articles.
- (4) If default is made in complying with this section, the corporation and every officer of the corporation who is in default is guilty.

27 Transactions and branches

- (1) Contracts on behalf of a corporation may be made as follows:
 - (a) a contract which if made between private persons would be by law required to be in writing under seal may be made on behalf of the corporation in writing under the corporate seal of the corporation;
 - (b) a contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the corporation in writing and signed by any person acting under its authority, express or implied;

- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the corporation by any person acting under its authority, express or implied;

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

- (2) A document or proceeding requiring authentication by a corporation may be signed by an authorised officer of the corporation and need not be under its corporate seal.
- (3) A corporation may by writing under its corporate seal empower any person either generally or in respect of any specified matters as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of a corporation and under his seal, or, subject to subsection (5) of this section, under the appropriate official seal of the corporation, shall bind the corporation and have the same effect as if it were under its corporate seal.
- (4) The authority of any such agent or attorney shall as between the corporation and any person dealing with him continue for a period of two years from the date borne by the instrument conferring the authority or such lesser period as is therein specified but the authority may be terminated upon notice of the termination of the authority of the agent or attorney being given to the person dealing with him.
- (5) A corporation and any branch thereof may have for use in any place outside the Republic an official seal which shall be a facsimile of the corporate seal of the corporation with the addition on its face of the name of every place where it is to be used and, in the case of a branch, the name of that branch; the official seal of a branch may be known as the branch seal.
- (6) A corporation may in any of the ways set forth in the preceding subsections of this section, or by instrument under the hand or seal of its resident secretary or under the hand or seal of a director or the hand or seal of a person or corporation nominated by such secretary or nominated by the directors of the corporation, establish a branch in any part of the world and the same shall thereby be established and a corporation may in like manner cease to have a branch. Upon the corporation ceasing to have a branch any rights or obligations and any

property of the branch shall be rights, obligations and property of the corporation.

- (7) Where a corporation has established a branch it may in the instrument establishing the branch or in a subsequent instrument signed or sealed by the resident secretary or under its own seal appoint one or more persons to be branch directors and to constitute a local board, make provision for a branch seal and for its custody and prescribe the person by whom such seal is to be affixed. Subject to any directions or restrictions imposed from time to time by the directors of the corporation, a branch shall have power to bind the corporation and to issue shares or debentures of the corporation.
- (8) A branch may enter into transactions in the same manner as the corporation may enter into transactions.
- (9) Instruments made or authenticated under or by the use of any official seal of a corporation or a branch thereof shall be as effective as if the corporate seal of the corporation had been affixed thereto; the date on which and the place at which the official seal is affixed to any instrument shall be shown on the instrument.
- (10) No corporation or foreign corporation by itself or any of its branches shall lend within any prescribed period any amount or amounts in aggregate of more than one hundred thousand dollars other than to the Republic of Nauru Finance Corporation or to a borrower approved by the Republic of Nauru Finance Corporation.
- (11) A prescribed period for the purpose of subsection (10) shall, unless any other period as prescribed by regulations, be any period of twelve months.
- (12) Each loan made in contravention of subsection (10) shall constitute an offence against this Act and shall be irrecoverable by the lender and by any assignee of the lender:

Provided that, if the right to repayment of the loan is assigned to an assignee approved by the Republic of Nauru Finance Corporation the debt shall be as good and as recoverable by the approved assignee and by any subsequent assignee from the approved assignee as if the loan had not been made in contravention of subsection (10) or subsection (11);

And provided further that if such an assignment is made to an assignee approved by the Republic of Nauru Finance Corporation and written notice of the making of a loan in

contravention of subsection (10) or subsection (11) was given to the Republic of Nauru Finance Corporation within twelve months of the making of such loan, no prosecution shall be brought or other action under this Act taken for the contravention of subsection (10) or subsection (11) constituted by the making of such loan.

- (13) Upon conviction of the offence of making a loan in contravention of subsection (10) or subsection (11), the Court may order that the corporation making such loan shall be wound up under the provisions of this Act in addition to imposing any other penalty.
- (14) The Republic of Nauru Finance Corporation may exempt generally or in any particular case any corporation, corporations or classes of corporations, and any foreign corporation, foreign corporations or classes of foreign corporations, either absolutely or subject to such conditions as it sees fit, from compliance with the provisions of subsections (10) and (11) and any such exemption may relate to any particular transaction or any class or classes of transactions.

28 Prohibition of carrying on business with fewer than statutory minimum of members

If at any time the number of members of a corporation is reduced in the case of a holding corporation below one or in the case of a trading corporation below two and it carries on business for more than six months while the number is so reduced, every person who is a member of the trading corporation during the time it so carries on business after those six months and every officer of any such trading or holding corporation during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than one or two members, as the case may be, shall be liable, and if more than one jointly and severally liable, for the payment of the whole of the debts of the corporation contracted during the time that it so carries on business after those six months and may be sued therefor, and the corporation and every such member shall be guilty of an offence against this Act if the corporation so carried on business after those six months:

Provided that in the case of a holding corporation so long as debentures of the kind referred to in subsection (12) of section 66 of this Act are issued and not redeemed it shall be deemed, for the purpose of this section, to have one member.

Division 3 — Restrictions on holding corporations

29 Restrictions on membership in holding corporations

- (1) A holding corporation shall not have more than twenty members, counting joint holders of any one share as one person and excluding the holders of share warrants, and shall not have issued at any one time more than twenty bearer shares in addition to its registered share, if any.
- (2) If a holding corporation is in breach of subsection (1) of this section, the Minister may by notice in the Gazette order that the corporation be converted into a trading corporation and thereafter the corporation shall be deemed to be a trading corporation and shall be subject to the provisions of this Act applicable to trading corporations.
- (3) Where an order is made under this section for the conversion of a holding corporation into a trading corporation, the corporation shall forthwith surrender to the Registrar its certificate of incorporation and the Registrar shall issue a new certificate which shall have the same expiry date as that of the certificate surrendered; the conversion shall take effect only from the date of the issue of the new certificate and it shall be an offence for the corporation to carry on business after the date of the order until the conversion has taken effect.

30 Restrictions on transactions of holding corporations

- (1) A holding corporation shall not carry on business as a factor or broker or as a manufacturer of or dealer, as principal or agent, in goods or raw materials whether the goods or raw materials are ascertained or unascertained and whether they are in existence or are to come into existence in the future.
- (2) The provisions of this section shall not prevent a holding corporation acquiring or selling goods or raw materials otherwise than in the course of carrying on the business of trading in goods or raw materials but the onus shall be on a corporation which acquires goods or raw materials and disposes of them within one year from the date of acquisition to prove that it acquired or sold such goods or raw materials otherwise than in the course of carrying on the business of trading in goods or raw materials.
- (3) Every director and other officer of a holding corporation shall be personally liable for the debts and liabilities of a corporation

which has carried on business or acted in contravention of subsection (1) of this section unless he proves that such business was carried on or such act done without his knowledge and that his lack of knowledge was not due to the neglect by him of his duties as such director or officer.

- (4) A registered director and a resident secretary shall not be liable for such debts or liabilities unless it is proved that such director or secretary had actual knowledge of the contravention and expressly consented thereto.

PART IV — SHARES, DEBENTURES AND CHARGES

Division 1 — Prospectuses

31 Requirement to issue a prospectus with any form of application for shares or debentures

- (1) A person shall not issue, circulate or distribute any form of application for shares in or debentures of a corporation unless the form is issued, circulated or distributed together with a prospectus a copy of which has been lodged with and filed by the Registrar.
- (2) Subsection (1) of this section shall not apply if the form of application is issued, circulated or distributed in connection with shares or debentures which are not offered to the public but otherwise that subsection shall apply to any such form of application whether issued, circulated or distributed on or with reference to the formation of a corporation or subsequently.
- (3) A corporation shall not without the approval of a general meeting vary the terms of a contract referred to in the prospectus, unless the variation is made subject to the approval of a general meeting.

32 Holding corporation not to invite investment from public

- (1) No person or corporation shall issue an invitation to the public to deposit money with or lend money to a holding corporation.
- (2) No person or corporation shall issue an invitation to the public or distribute forms of application to the public to subscribe for shares or debentures in a holding corporation.

33 Invitations to public to lend money to or deposit money with a trading corporation

- (1) An invitation to the public to deposit money with or lend money to a trading corporation shall not be issued, circulated or distributed by the corporation or by any other person unless:
- (a) a prospectus in relation to the invitation has been lodged with and filed by the Registrar;
 - (b) the prospectus contains an undertaking by the corporation that it will, within two months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan;
 - (c) the document is described or referred to in the prospectus and in any other document, whether constituting or relating to the invitation, as:
 - (i) an unsecured note or an unsecured deposit note;
 - (ii) a mortgage debenture or certificate of mortgage debenture stock; or
 - (iii) a debenture or certificate of debenture stock, and in accordance with the provisions of this section.
- (2) No invitation to the public to deposit money with or lend money to a trading corporation shall be made except through a registered corporation broker.
- (3) Where pursuant to an invitation referred to in subsection (1) of this section a corporation has accepted from any person any money as a deposit or loan, the corporation shall, within two months after the acceptance of the money, issue to that person a document which:
- (a) acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and
 - (b) complies with the description contained in the prospectus and with any regulations made hereunder and contains on its face a statement that it is a document of that description.

- (4) Nothing in this section shall apply to a prescribed corporation and nothing in this Act shall require a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed corporation.
- (5) Subject to regulations, the Minister may by notice in the Gazette declare a corporation to be a prescribed corporation for the purpose of this section.
- (6) Every corporation or other person that contravenes or fails to comply with any of the provisions of this section and every officer of a corporation who is in default shall be guilty of an offence against this Act.
- (7) For the purposes of this section a document issued by a borrowing corporation certifying that a person named therein in respect of any deposit with or loan to the corporation is the registered holder of a specified number or value:
 - (a) of unsecured notice or unsecured deposit notes;
 - (b) of mortgage debentures or certificates of mortgage debenture stock; or
 - (c) of debentures or certificates of debenture stock,issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

34 Requirements of a prospectus

- (1) Until regulations relating to the issue of prospectuses have been made, no prospectus shall be issued unless it has been approved as to its form and content by the Registrar.
- (2) Upon regulations relating to the issue of prospectuses being made, a prospectus shall be issued only in accordance with the provisions of such regulations.

35 Advertisements

- (1) No advertisement offering or calling attention to an offer or intended offer of shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase

shall be published in Nauru or elsewhere until it has been approved by the Registrar.

- (2) Application for approval of an advertisement shall be lodged with the Registrar together with a copy of the advertisement verified in such manner as the Registrar directs.
- (3) Any person or corporation who publishes or causes to be published in Nauru or elsewhere an advertisement without the prior approval of the Registrar in breach of the provisions of subsection (1) of this section is guilty of an offence.

36 Retention of oversubscriptions in debenture issue

- (1) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus:
 - (a) that it expressly reserves the right to accept or retain over-subscriptions; and
 - (b) a limit on the amount of the over-subscriptions that may be accepted or retained.
- (2) Subject to the provisions contained in the regulations, where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions:
 - (a) the corporation shall not make, authorise or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement of reference to the total assets and the total liabilities of the corporation; and
 - (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

37 Registration of prospectus

- (1) A prospectus shall not be issued, circulated or distributed by any person unless a copy thereof has been lodged with and filed by the Registrar.

- (2) The Registrar shall not file a copy of any prospectus unless:
- (a) a copy signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorised in writing is lodged with the Registrar on or before the date of its issue and the prescribed fee paid;
 - (b) the prospectus appears to comply with the requirements of this Act and the regulations or the Registrar is satisfied that any departure from the requirements of this Act or the regulations by such prospectus is justified and is unlikely to mislead a person investing on the faith of its contents; and
 - (c) there are also lodged with the Registrar copies, verified as the Registrar directs, of any consents required by section 39 to the issue of the prospectus and all material contracts referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof verified as the Registrar directs.
- (3) If a prospectus is issued without a copy thereof having been so filed, the corporation and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence against this Act.

38 Document containing offer of shares to be deemed to be a prospectus

- (1) Where a corporation allots or agrees to allot to any person any shares or debentures of the corporation with a view to all or any of them being offered for sale to the public, the offer to the public shall be made through a corporation broker and any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the corporation and all enactments and rules of law as to minimum subscriptions, to advertisements, to the contents of prospectuses and to liability in respect of advertisements and statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

- (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown:
 - (a) that an offer of the shares or debentures or any of them for sale to the public was made within six months after the allotment or agreement to allot; or
 - (b) that at the date when the offer of them, or of any of them, for sale to the public was made the whole consideration to be received by the corporation in respect of the shares or the debentures had not been so received.
- (3) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.
- (4) In addition to complying with the other requirements of this Division, the document making the offer shall state:
 - (a) the net amount of the consideration received or to be received by the corporation in respect of shares or debentures to which the offer relates; and
 - (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted may be inspected.
- (5) Where an offer to which this section relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subsection (1) of this section is signed on behalf of the corporation or firm by two directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorised in writing.

39 Expert's consent to issue of prospectus containing statement by him

- (1) A prospectus inviting the subscription for or purchase of shares in or debentures of a corporation and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless:
 - (a) he has given and has not, before the lodging of a copy of the prospectus for filing, withdrawn his written consent to

the issue thereof with the statement included in the form and context in which it is included; and

- (b) there appears in the prospectus a statement that he has given and not withdrawn his consent.
- (2) If any prospectus is issued in contravention of this section, the corporation and every person who is knowingly a party to the issue thereof is guilty of an offence.

40 Civil liability for misstatement in prospectus

- (1) Subject to this section, each of the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any shares or debentures on the faith of a prospectus for any loss or damage sustained by reason of any untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be material, that is to say every person who:
- (a) is a director of the corporation at the time of the issue of the prospectus;
 - (b) authorised or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
 - (c) is a promoter of the corporation; or
 - (d) authorised or caused the issue of the prospectus.
- (2) Notwithstanding anything in subsection (1) of this section, where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not by reason only thereof be liable as a person who has authorised or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, barrister and solicitor, solicitor or stock or share broker shall not for that reason alone be construed as an authorisation by such person of the issue of the prospectus.
- (3) No person shall be so liable if he proves:
- (a) that, having consented to become a director of the corporation, he withdrew his consent before the issue of

the prospectus, and that it was issued without his authority or consent;

- (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;
 - (c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or
 - (d) that:
 - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true;
 - (ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 39 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before any allotment or sale thereunder; and
 - (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (4) Subsection (3) of this section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 39, as a person who has authorised or caused

the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

- (5) A person who apart from this subsection would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section 39, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves:
- (a) that, having given his consent under section 39 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
 - (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons therefor; or
 - (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.
- (6) Where:
- (a) the prospectus contains the name of a person as a director of the corporation, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
 - (b) the consent of a person is required under section 39 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the corporation, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised or caused the issue thereof shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

- (7) Where in any prospectus or advertisement of the kind referred to in subsection (1) of section 35 there is an untrue statement of wilful non-disclosure, any person who authorised or caused the issue of the prospectus or advertisement shall be guilty of an offence against this Act unless he proves that the statement or non-disclosure was immaterial or that he had reasonable grounds for believing and did, up to the time of the issue of the prospectus, believe the statement was true or the non-disclosure was immaterial.
- (8) A person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion therein of a statement purporting to be made by him as an expert.

Division 2 — Restrictions on allotment

41 Minimum subscriptions

- (1) No allotment shall be made of any shares of a corporation offered to the public unless the shares have been offered to the public through a registered corporation broker.
- (2) The registered corporation broker shall be the agent of the corporation to receive applications for allotment of the shares and shall be so described in the prospectus.
- (3) All moneys payable on application for the shares shall be paid to the registered corporation broker and pending receipt by the registered corporation broker of the amount of the minimum subscription he shall hold all moneys received by him as a stakeholder and, if the amount of the minimum subscription is not received by the registered corporation broker within the time stated in the prospectus, he shall, subject to any right under the terms of the prospectus to deduct any costs and charges owing to him or to the Registrar in connection with the prospectus or the offer or his acting as such broker in the matter, return the application money or such proportion thereof as remains after making deductions, if any, in accordance with the terms of the prospectus to the applicants pro rata in accordance with the respective amounts paid by them.
- (4) Upon receipt of the amount of the minimum subscription the registered corporation broker shall, subject to his right to deduct from such moneys his proper remuneration and disbursements, hold such moneys and any further application moneys as agent for the corporation.

- (5) No allotment shall be made of any shares of a corporation offered to the public unless:
- (a) the minimum subscription has been subscribed; and
 - (b) the sum payable on application for the shares so subscribed has been received by the corporation;

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

- (6) The minimum subscription shall be:
- (a) calculated on the nominal value of each share and, where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and
 - (b) reckoned exclusively of any amount payable otherwise than in cash.
- (7) The amount payable on application on each share offered to the public shall not be less than five per centum of the nominal amount of the share.
- (8) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.
- (9) No corporation shall allot, and no officer or promoter of a corporation or a proposed corporation shall authorise or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of twelve months from the issue of the prospectus.
- (10) Where an allotment of shares or debentures is made on the basis of a prospectus after the expiration of twelve months from the issue of the prospectus, such allotment shall not, by reason only of that fact, be voidable or void.

42 Application moneys to be held in trust until allotment

- (1) Subject to subsections (3), (4) and (5) of section 41, all applications and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public shall, until the allotment of such shares or debentures, be

held by the corporation upon trust for the applicant and such moneys shall be paid into and kept in a separate trust account at a bank pending allotment.

- (2) If default is made in complying with this section, every officer of the corporation in default who knowingly and wilfully authorises or permits the default is guilty of an offence.
- (3) For the purposes of this section, '**bank**' means a corporation or foreign corporation lawfully carrying on business as a commercial and trading bank in Nauru and any corporation or institution carrying on the business outside Nauru and approved for the purposes of this section by the Registrar.²

Division 3 — Shares in corporations

43 Return as to allotments

- (1) Where a corporation makes any allotment of its shares, the corporation shall, within one month thereafter, cause to be lodged with the Registrar a return of the allotment stating:
 - (a) the number and nominal amounts of the shares comprised in the allotment;
 - (b) the date of the allotment;
 - (c) the amount, if any, paid, deemed to be paid, or due and payable on the allotment of each share;
 - (d) where the capital of the corporation is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and
 - (e) subject to subsection (2) of this section, in the case of a trading corporation, the full name and the address of each of the allottees and the number and class of shares allotted to him or, in the case of shares issued to bearer, a statement to that effect together with particulars of the numbers of shares issued to bearer.

² The amendment sought to be made to section 42(3) of this Act by section 6(1)(b) of the *Corporation (Amendment) Act 1973* was misdescribed (to make a substitution for the words 'carrying on the business of banking outside Nauru', which words do not appear, by inserting in their place the words 'carrying on such business outside Nauru') and so has not been incorporated in this compilation.

- (2) In the case of a trading corporation where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing the trading corporation shall lodge with the return the contract evidencing the entitlement of the allottee or a copy of any such contract certified as prescribed.
- (3) In the case of a trading corporation where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made:
 - (a) pursuant to a contract not reduced to writing;
 - (b) pursuant to a provision in the articles; or
 - (c) in satisfaction of a dividend declared in favour of, but not payable in cash, to the shareholders;or where an account or reserve has been applied directly in paying up shares already issued, the corporation shall lodge with the return a statement containing such particulars as are prescribed.
- (4) No return of allotment in respect of shares subscribed for in the memorandum or issued to the Authority pursuant to the provisions of section 15 of this Act shall be required to be lodged.
- (5) If default is made in complying with this section, every officer of the corporation who is in default shall be guilty of an offence against this Act.

44 Calls and forfeiture

- (1) Any corporation may:
 - (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
 - (b) accept from any member the whole or any part of the amount remaining unpaid on any shares although no part of that amount has been called up; and
 - (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

- (2) A holding corporation may forfeit shares whether fully paid up or not on the happening of a specified event in accordance with the terms of issue of those shares but without releasing the member from present uncalled liability and, if any such shares are not reissued, without releasing him from future uncalled liability:

Provided that no bearer shares shall be forfeited unless the warrant for such shares is delivered up and cancelled by the corporation.

- (3) The event enabling forfeiture may be specified by the corporation after issue if the terms of issue so provide.

45 Reserve liability

A corporation may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the corporation being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes of the corporation being wound up, but no such resolution shall prejudice the rights of any person acquired before the passing of the resolution.

46 Bearer shares

- (1) A corporation, unless its articles otherwise provide and subject to any regulations made under this Act, may issue shares to bearer but such shares must be fully paid up and it may exchange any fully paid up share standing in its register of members in the name of a member for a bearer share upon the surrender of the certificate of such share and the bearer share so issued shall bear the same number as the share certificate so surrendered and it may provide by coupons or otherwise for the payment of future dividends on bearer shares issued by it and the document of title to a bearer share issued to the bearer shall be known as a share warrant.
- (2) A share warrant shall be under the seal or the official seal of the corporation and, subject to the provisions of section 86 of this Act, shall entitle the bearer of such warrant to the shares specified in it and such shares may be transferred by delivery of the share warrant.

47 Surrender of warrant

- (1) The bearer of a share warrant shall, subject to the articles, and unless the warrant is marked under the provisions of subsection (5) of section 86, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members and to the issue of a share certificate for the shares in respect of which he is entered as a member.
- (2) The corporation shall be responsible for any loss incurred by any person by reason of the corporation entering in its register of members the name of any bearer of a share warrant in respect of share specified therein without the share warrant being surrendered to the corporation and cancelled.

48 Extent of membership

The bearer of a share warrant shall be a member of the corporation but his rights as a member and his interest in the profits and assets of the corporation may be restricted by the articles.

49 Particulars in register

- (1) Upon the issue of a share warrant in respect of any shares, the corporation shall:
 - (a) if the person to whom the warrant is issued was already a member of the corporation, strike out of its register of members and any branch register wherein the share is registered the name of the member then entered therein as holding the shares in respect of which the warrant is issued; and
 - (b) shall enter in the register the following particulars:
 - (i) the fact of the issue of the warrant;
 - (ii) a statement of the shares included in the warrant distinguishing each share by its number; and
 - (iii) the date of the issue of the warrant.
- (2) Upon the surrender of a warrant, the date of such surrender shall be entered as if it were the date on which the person ceased to be a member.

50 Regulations as to share warrants

Regulations may be made under this Act for the purpose of changing, altering or modifying the articles of any or all corporations and otherwise in respect of the right of corporations to issue bearer shares and, without limiting the generality of the foregoing, for limiting the time for which share warrants may be issued by corporations or by particular corporations or by corporations of a particular class and requiring the holders of share warrants to become registered members of corporations or particular corporations or of corporations of a particular class.

51 Currency of shares, interest-bearing shares, redeemable shares, shares with special rights and gift shares

- (1) A corporation shall have power to issue the number of shares stated in its memorandum and such shares may be divided into one or more classes, all of which classes shall, subject to regulations which may be made hereunder, consist of shares with a par value, with such designations, preferences, limitations and relative rights as shall be stated or provided for in the articles. Shares shall be expressed in Australian currency or in the money of any other country prescribed by regulations.
- (2) The articles may limit or deny voting rights of or provide special voting rights for the shares of any class or the shares within any class to any extent not inconsistent with the provisions of this Act or the regulations made hereunder.
- (3) Without limiting the matter continued in the preceding subsections of this section, a corporation may issue shares of preferred or special classes and in particular, but without limiting the generality of the foregoing, may issue shares:
 - (a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles for the redemption thereof or at the price fixed pursuant to power contained therein;
 - (b) entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends;
 - (c) having preference over any other class or classes of shares as to the payment of dividends;
 - (d) having a preferential right to a dividend at a fixed rate;

- (e) having preference in respect of the assets of the corporation over any other class or classes of shares upon the voluntary or compulsory liquidation of the corporation;
- (f) having rights only to return of paid up capital or to return of paid up capital plus no more than a fixed proportion thereof upon a liquidation of the corporation;
- (g) convertible into shares of any other class or into shares of any series of classes:

Provided that shares shall not be converted into a class having prior or superior rights or preferences as to dividends or distribution of assets upon liquidation over shares proposed to be converted unless the consent of all members holding shares having such prior or superior rights is obtained;

- (h) subject to the provisions of section 44, subject to forfeiture by the corporation in the circumstances or in the event provided in the articles or in the terms of issue of the shares:

Provided that the articles shall not be altered to make shares subject to forfeiture which were not originally so issued without the holders thereof being given an opportunity to object thereto and, in the event of their so doing, any alteration to that effect shall be void;

Provided that a forfeiture or, where there have been previous forfeitures, the last forfeiture shall not be effective for any purpose if it by itself or in combination with any other forfeiture results in the reduction of the number of members of the corporation to less than permitted by this Act;

- (i) unless the articles provide to the contrary, on which interest is payable by the corporation to the holder at such rates and upon such terms and conditions as are fixed at the time of issue or by the articles:

Provided that such interest shall not become due and payable by the corporation to the holder if the corporation has any liabilities actual or contingent other than liabilities for interest on shares and, upon a winding up, there shall be deemed to be no liability in the corporation for the payment of such interest unless and until the claims of all creditors and the costs of the winding up have been met or satisfied;

- (j) in the case of a holding corporation, of up to ten dollars in total nominal value by way of gift and without receiving any valuable consideration and such shares shall be deemed to be fully paid shares. Shares issued by way of gift shall not for three months after the date of issue thereof be contained in the same certificate as other shares, the certificates for all such shares shall clearly express the date of issue of the share or shares to which they relate and for at least three months after such date of issue such certificates shall bear a notation clearly written thereon that such shares are liable to forfeiture under the provisions of this section within three months of the date of issue. No other note of or relating to the fact that such shares were issued without valuable consideration need be made upon the share certificate but a notification of such issue shall be made in the Minute Book of the corporation and in the register of members.
- (4) Where shares are issued by way of gift and without consideration:
- (a) they shall not be issued as, or within three months after the date of their issue converted into, bearer shares, and notice of such issue shall be given to every registered member and every debenture holder and if issued within twelve months after incorporation also to the subscribers to the memorandum; and
 - (b) if at any time within three months from the date of issue of such shares any of such persons to whom notice is required by this subsection to be given objects to the issue of all or any of such shares the shares the issue of which is objected to shall be forfeited and the issue shall be deemed never to have been made.
- (5) Regulations may prescribe rates of exchange between any currency used in Nauru and the money of any other country in which shares are expressed or may prescribe a method for ascertaining the rate of such exchange and the rate of exchange so prescribed or ascertained in accordance with such Regulations shall be deemed to be the rate of exchange between such money of such other country and the currency used in Nauru for all purposes relating to the nominal value or amount payable to the corporation or paid up in respect of such shares. The rate of exchange or the method of ascertaining the rate of exchange may be altered from time to time by regulations and may be altered retrospectively. Regulations made under this subsection may be made to apply in respect of

corporations generally, particular corporations or classes of corporations.

52 No redemption when insolvent

No redemption or purchase of redeemable shares shall be made by a corporation that is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon a winding-up.

53 Statement of cancellation

- (1) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this Act and thereupon such shares shall be restored to the status of authorised, but unissued shares, unless the articles provide that such shares when redeemed or purchased will not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the memorandum and articles and shall reduce the number of shares of the class so cancelled which the corporation is authorised to issue by the number of shares so cancelled.
- (2) The statement of cancellation shall be in the form prescribed by regulation and shall be lodged with the Registrar.
- (3) Upon the filing of such statement of cancellation and payment of all fees and costs in relation thereto and as from the date of redemption or purchase as the case may be, the issued capital of the corporation shall be deemed to be reduced by the amount of the shares so cancelled and, in the case of a corporation whose articles provide that such shares shall not be reissued, the filing of the statement from the date aforesaid shall operate also as a reduction of the number of shares so cancelled which the corporation is authorised to issue.
- (4) Nothing contained in this section shall affect any right to cancel shares or to reduce capital in any other manner permitted by this Act.

54 Dealing by a corporation in its own shares, etc.

- (1) Except as is otherwise expressly provided by this Act or the regulations no corporation shall, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, give any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the corporation or, where the corporation is a subsidiary, in its holding corporation or in any way purchase, deal in or lend money on its own shares.
- (2) Nothing in subsection (1) of this section shall prohibit:
 - (a) where the lending of money is part of the ordinary business of a trading corporation, the lending of money by the trading corporation in the ordinary course of its business;
 - (b) the provision by a trading corporation in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully paid shares in the trading corporation or its parent corporation, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the corporation, including any director holding a salaried employment or office in the corporation; or
 - (c) the making by a trading corporation of loans to persons, other than directors, *bona fide* in the employment of the corporation or of a subsidiary of the corporation with a view to enabling those persons to purchase fully paid shares in the corporation to be held by themselves by way of beneficial ownership;
 - (d) the making of a loan by a holding corporation for the purpose of or in connection with a purchase of its own shares.
- (3) If there is any contravention of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

55 Right of holding corporation to acquire and dispose of its own shares

- (1) A holding corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles so provide, or with the affirmative vote of the holders of at least two-thirds of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.
- (2) Notwithstanding the foregoing, a holding corporation may purchase or otherwise acquire its own shares for the purpose of:
 - (a) eliminating fractional shares;
 - (b) paying dissenting shareholders entitled to payment for their shares under the provisions of this Act or the regulations;
 - (c) effecting, subject to the other provisions of this Act, the retirement of its redeemable shares by redemption or by purchase at a price not to exceed the redemption price.
- (3) No purchase of or payment for its own shares shall be made at a time when the holding corporation is insolvent or when such purchase or payment would make it insolvent, and if any such purchase or payment is made when the corporation is insolvent or when such purchase or payment makes it insolvent the directors other than a registered director shall be personally liable to the extent of such payment in a winding-up of the corporation.
- (4) Regulations may be made modifying or extending the provisions, limitations and restrictions of this section.

56 Cancellation of re-acquired shares by holding corporation

A holding corporation may at any time by resolution of its directors cancel all or any part of the shares of the corporation of any class re-acquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed in accordance with the regulations made hereunder.

57 Distributions from capital surplus of holding corporations

- (1) The directors of a holding corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:
 - (a) no such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent;
 - (b) no such distribution shall be made unless the articles so provide or such distribution is authorised by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of the corporation;
 - (c) no such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid;
 - (d) no such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of a winding up to the holders of shares having preferential rights to the assets of the holding corporation in the event of a winding-up;
 - (e) each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.
- (2) The directors of a holding corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent, but each distribution when made, shall be identified as a payment of cumulative dividends out of capital surplus.

58 Power to pay certain commissions

- (1) A corporation may pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the corporation, if:
 - (a) a payment of such a commission is authorised by the articles;
 - (b)
 - (i) in the case of a trading corporation the commission does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;
 - (ii) in the case of a holding corporation the commission does not exceed the amount or rate authorised by or under the articles;
 - (c) the amount or rate of the commission is:
 - (i) in the case of shares offered to the public for subscription disclosed in the prospectus; and
 - (ii) in the case of shares not so offered disclosed in any circular or notice inviting subscription for the shares; and
 - (d) the amount of shares for which persons have agreed for a commission to subscribe absolutely is disclosed in like manner.
- (2) Except as provided in subsection (1) of this section, no corporation shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the corporation, whether the shares or money are so applied by being added to the purchase money of any property acquired by the corporation or to the contract price of any work to be executed for the corporation or the moneys paid out of the nominal purchase money or contract price or otherwise.
- (3) Nothing in this section shall affect the power of any corporation to pay brokerage (in addition to or in lieu of the commission referred to in subsection (1) of this section) but the amount or rate per centum of the brokerage paid or agreed to be paid by

the corporation shall, in the case of shares offered to the public for subscription, be disclosed in the prospectus or, in the case of shares not offered to the public for subscription, be disclosed in the circular or notice inviting subscription for the shares, and regulations made under this Act may prescribe the maximum rate for such brokerage.

- (4) A vendor to, promoter of, or other person who receives payment in money or shares from a corporation shall have power to apply any part of the money or shares so received in payment of a commission the payment of which, if made directly by the corporation, would have been lawful under this section.

59 Issue of shares at a discount

- (1) A trading corporation shall not issue shares at a discount.
- (2) (a) Subject to the provisions of this section a holding corporation may issue shares at a discount.
- (b) No such issue shall be made while any share warrants for the corporation remain unsurrendered.
- (c) No such issue shall be made without the prior approval of the Registrar and except on such terms and conditions as he thinks fit.
- (d) Application for approval shall be made and:
- (i) the registered corporation agent shall be furnished with the names and addresses of all members and notices to such members of the proposed issue;
 - (ii) the registered corporation agent shall despatch such notices and inform the addressees that any objection must be conveyed so as to be received by the registered corporation agent or the Registrar within forty-two days from the date of the notice;
 - (iii) on the expiration of sixty days from the date of despatch of such notices the registered corporation agent shall lodge the application together with any objections received with the Registrar.
- (e) Upon approval being given, the corporation may issue at a discount not more than the number of shares mentioned on the notices to members within one month of the giving of approval.

- (f) No shares shall be transferred between the date of lodging of the application and the date of approval, unless the application is withdrawn.
- (3) If default is made in complying with this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

60 Issue of shares at a premium by trading corporation

- (1) Where a trading corporation issues shares for which a premium is received by the corporation whether in cash or in the form of other valuable consideration a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account called 'the share premium account' and the provisions of this Act relating to the reduction of the share capital of a trading corporation shall, subject to this section, apply as if the share premium account were paid up share capital of the corporation.
- (2) The share premium account may be applied:
 - (a) in paying up unissued shares to be issued to members of the corporation as fully paid bonus shares;
 - (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the corporation;
 - (c) in the payment of dividends if such dividends are satisfied by the issue of shares to members of the corporation;
 - (d) in writing off:
 - (i) the preliminary expenses of the corporation; or
 - (ii) the expenses of, or the commission or brokerage paid or discount allowed on, any issue of shares or debentures of the corporation;
 - (e) in providing for the premium payable on redemption of the debentures or redeemable shares.

61 Alteration of share capital

- (1) A corporation may by special resolution alter the conditions of its memorandum and articles in any one or more of the following ways, that is to say it may:
 - (a) increase its share capital by creation of new shares of

such amount as it thinks expedient;

- (b) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares;
 - (c) subdivide its shares or any of them into shares of smaller amounts than is fixed by the memorandum and articles so, however, that in the subdivision the proportion between the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (d) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of the share capital by the amount of the share so cancelled.
- (2) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.
- (3) Where a corporation has increased its share capital beyond the capital stated in its memorandum, it shall within twenty-eight days after the passing of the resolution authorising the increase cause to be lodged with the Registrar notice in the prescribed form of the increase.
- (4) If any corporation fails to comply with the provisions of subsection (3) of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

62 Validation of shares improperly issued

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

issued or allotted upon the terms of issue or allotment thereof as varied by the conditions, if any, imposed by the Registrar.

63 Special resolution for reduction of share capital

- (1) Subject to confirmation by the Registrar, a corporation may by special resolution reduce its share capital in any way and, in particular, without limiting the generality of the foregoing may do all or any of the following:
- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
 - (b) cancel any paid up capital which is lost or unrepresented by available assets;
 - (c) pay off any paid up share capital which is excess of the needs of the corporation or which it is otherwise in the interests of the corporation as a whole to have paid off;

and may, so far as necessary alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

- (2) Where the proposed reduction of share capital involves diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, and in any other case if the Registrar so directs:
- (a) every creditor of the corporation who at the time fixed by the Registrar is entitled to any debt or claim which, if that date were the commencement of the winding-up of the corporation, would be admissible in proof against the corporation shall be entitled to object to the reduction;
 - (b) the Registrar, unless satisfied on statutory declaration that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and the amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered;
 - (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Registrar may dispense with the consent of that creditor on the corporation securing

payment of his debt or claim by appropriating as the Registrar directs:

- (i) if the corporation admits the full amount of the debt or claim or although not admitting it is willing to provide for it, the full amount of the debt or claim; or
 - (ii) if the corporation does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Registrar.
- (3) Notwithstanding the provisions of subsection (2) of this section the Registrar may, having regard to any special circumstances of any case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.
- (4) All applications to the Registrar under the provisions of subsections (2) and (3) of this section shall be lodged with the Registrar and the corporation making such application shall bear the costs of any enquiry and advertisement directed by the Registrar under the provisions of such subsections.
- (5) The Registrar, if satisfied with respect to every creditor who under subsection (2) of this section is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as he thinks fit and may by order:
- (a) if for any special reason he thinks proper so to do, direct that the corporation shall, during such period, commencing on or at any time after the date of the order, as is specified in the order add to its name as the last words thereof 'and reduced'; and
 - (b) required the corporation to publish as the Registrar directs the reasons for reduction or such other information as the Registrar thinks expedient, and, if the Registrar thinks fit, the causes which led to the reduction.
- (6) An order made under subsection (5) of this section shall show the amount of the share capital of the corporation as altered by the order, the number of shares into which is to be divided and the amount of each share and the amount, if any, at the date of the order deemed to be paid up on each share.

- (7) A copy of the order made by the Registrar confirming the resolution for reducing share capital shall be lodged by the corporation with the Registrar and the prescribed fee thereon shall be paid by the corporation and on the filing of such copy of the order the reduction of share capital confirmed by such order shall take effect.
- (8) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the corporation is such as is stated in the order.
- (9) On the filing of the copy of the order the particulars shown in the order pursuant to subsection (6) of this section shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Registrar to be made in the name of the corporation shall, in the case of any addition to the name, for such period as is specified in the order of the Registrar, be deemed to be an alteration of the memorandum for the purposes of this Act.
- (10) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the order and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be, but where any creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the corporation is unable, within one year after the debt or claim becomes due and payable or one year after the date of reduction whichever is the later, to pay the amount of his debt or claim:
 - (a) every person who was a member of the corporation at the date of the registration of the order for reduction shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the corporation had commenced to be wound-up on the day before the date of the registration of the order for reduction; and
 - (b) if the corporation is wound up the Court on an application by any such creditor and on proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, may if it thinks fit settle accordingly a list of persons so liable to contribute, and make and

enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up;

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

- (11) Every officer of the corporation who:
- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
 - (b) wilfully misrepresents the nature or the amount of the debt or claim of any creditor; or
 - (c) aids, abets or is privy to any such concealment or misrepresentation;

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

64 Rights of holders of classes of shares

- (1) If the share capital of a corporation is divided into different classes of shares and provision is made by its articles for authorising the variation or abrogation of the rights attached to any class of shares in the corporation, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares and, in pursuance of the said provision, the rights attached to any class of shares are at any time varied or abrogated the holders of not less in the aggregate than ten per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may lodge an application with the Registrar to have the variation or abrogation cancelled, and if any such application is made, the variation or abrogation shall not have effect until confirmed by the Registrar on application lodged by the corporation in manner prescribed.
- (2) An application shall not be invalid by reason of any applicant having consented to or voted in favour of the resolution for the variation or abrogation if the Registrar is satisfied that any particular fact was not disclosed by the corporation to that applicant before he so consented and voted and, for the purpose of this section, he shall be deemed not to have consented to, or voted in favour of, such resolution.

- (3) The application shall be lodged within one month after the date on which consent was given or the resolution was passed or such further time as the Registrar allows, and the application shall be lodged in the first instance in writing in the prescribed form.
- (4) On the application, the Registrar, after hearing the applicants and any other persons who lodge an application with the Registrar to be heard and who appear to the Registrar to be interested, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicants, disallow the variation or abrogation as the case may be and shall, if not so satisfied, confirm it and the decision of the Registrar shall be final and the Registrar shall have a discretion as to how the costs and expenses of and incidental to such application shall be paid and may order accordingly.
- (5) The corporation shall within twenty-eight days after the making of an order by the Registrar on any such application cause to be lodged with the Registrar a copy of the Registrar's order and if default is made in complying with this provision the corporation and every officer of the corporation who is in default is guilty of an offence.
- (6) The issue by a corporation of preference shares ranking *pari passu* with existing preference shares issued by the corporation shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first mentioned shares was authorised by the terms of issue of existing preference shares or by the articles in force at the time the existing preference shares were issued.

65 Rights of holders of preference shares to be set out in articles

- (1) No corporation shall allot any preference shares or convert any issue shares into preference shares unless there is set out in its articles the rights of the holders of those shares with respect to the payment of capital, participation in surplus assets and profits, cumulative and non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.
- (2) If default is made in complying with this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

Division 4 — Debentures

66 Register and votes of debenture holders and copies of trust deed

- (1) Subject to the provisions of subsections (7) to (22) of this section, every corporation which issues debentures shall keep a register of holders of debentures at the registered office of the corporation. A copy of the terms of debentures issued by the corporation shall be kept with the register. If the terms of a debenture incorporate in whole or in part the provisions of Table 'C' of the Second Schedule or terms provided for in the articles of incorporation of the corporation or prescribed by regulations as being the form which may or shall be in any particular case adopted, the copy of the terms kept at the office of the corporation may disclose such terms by reference to the said table, articles or regulations.
- (2) The register shall except when duly closed be open to the inspection of the registered holder of any debentures and of any holder of shares in the corporation and shall contain particulars of the names and addresses of the registered debenture holders and the amount of the debentures held by them.
- (3) For the purposes of this section a register shall be deemed to be duly closed in accordance with the provisions contained in the articles or in the debentures or debenture stock certificates or in the trust deeds or other documents relating to or securing the debentures during such periods, not exceeding in the aggregate thirty days in any calendar year, as is therein specified.
- (4) Every registered holder of debentures and every holder of shares in a corporation shall at his request be supplied by the corporation with a copy of the register of the holders of debentures of the corporation or any part thereof on payment of five dollars but the copy need not include any particulars as to any registered debenture holder other than his name and address and the debentures held by him.
- (5) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the corporation to a holder of those debentures at his request on payment of the sum of five dollars or such less sum as is fixed by the corporation.

- (6) If inspection is refused, or a copy is refused or not forwarded within a reasonable time, but not more than forty-two days, after a request has been made pursuant to this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence against this Act.
- (7) The holder of a bearer debenture may, unless the terms of the debenture or the articles as at the date of issue of the debenture otherwise provide, convert the same to a registered debenture in the following manner:
- (i) a photographic copy of the bearer debenture shall be delivered to the registered office of the corporation together with a direction as to the name and address of the person who is to be registered as the holder of the debenture;
 - (ii) thereupon the directors of the corporation shall resolve to register the person so named as the holder of the debenture;
 - (iii) registration pursuant to such resolution shall take effect upon receipt by the corporation of the original bearer debenture certificate within the time specified in paragraph (v) of this subsection and shall have effect as from the date of the directors' resolution;
 - (iv) upon the resolution of the directors referred to in paragraph (ii) of this subsection the bearer debenture shall cease to be a security of the corporation but in the event of the certificate therefor not being received within the time specified in paragraph (v) of this subsection shall become a security of the corporation ranking from the original date of issue;
 - (v) upon the bearer debenture certificate being received by the corporation for cancellation within one month of the passing of the resolution the corporation shall issue a certificate to the person entitled thereto in respect of the registered debenture into which the bearer debenture has been so converted; and
 - (vi) should the bearer debenture certificate not be received by the corporation for cancellation within one month of the passing of the resolution the same shall have been deemed to have remained as a security and the resolution for registration and any registration in respect of such debenture shall be and be deemed to be cancelled.

- (8) The corporation shall be responsible for any loss incurred by any person by reason of the corporation entering in its register of debenture holders the name of the bearer of any bearer debenture in respect of such debenture without the bearer debenture certificate being surrendered to the corporation and cancelled as aforesaid.
- (9) Where a corporation has issued bearer debentures it shall keep at its registered office a record thereof which shall show the total principal amount of the issued bearer debentures of that series and the full terms thereof.
- (10) Upon the surrender of a bearer debenture, the corporation shall enter in the record of bearer debentures the fact and date of its surrender.
- (11) The record of bearer debentures shall be open to the inspection of the holder of any debentures and of the holder of any shares in the corporation.
- (12) Where the terms of any debentures issued by a holding corporation so provide, the provisions of this Act and of the articles of the corporation giving the members or any class of the members of the corporation the right and power to vote and to demand a poll shall so far as they relate to that corporation for the period and upon the happening of the events, if any, specified in the debenture and while the debenture remains unredeemed, be void and of no effect for any purpose whatsoever and the following provisions of this subsection shall, subject to the terms of the debenture, thereupon and for such period as those provisions are void have effect:
 - (a) the holders of all debentures under the terms of which those provisions of this Act and of the articles are for the time being void shall have a right and power to vote and thereby determine all those matters in respect of which the members had the right and power to vote and thereby to determine under those provisions before they became void;
 - (b) every holder of such a debenture, or the trustee for any such holder, shall have one vote for each whole Australian dollar, or its equivalent in any other currency, of the principal sum the subject of the debenture outstanding at the time when the votes are counted;
 - (c) holders of such debentures may cast their votes by proxy or in writing without attending a meeting;

- (d) a resolution in writing signed by a majority in value of the holders of such debentures shall be as effectual as would a resolution passed by a similar majority at a meeting duly convened and held for the purpose;
 - (e) the memorandum and articles of the corporation may not be altered;
 - (f) any provision in this Act or the articles of the corporation that anything is required or permitted to be done by a general meeting or by a resolution of the members shall be construed as requiring or permitting the same to be done by a resolution of those debenture holders in whom the right and power to vote are for the time being, passed by such a majority of votes as would, if the votes were votes of members, be the majority necessary to pass the resolution;
 - (g) subject to paragraph (d) hereof, notice of a meeting of those debenture holders in whom the right and power to vote are for the time being vested shall be given to such debenture holders and their trustees, if any, in the same manner as notice of a meeting of members is required to be given to members; and
 - (h) unless it is otherwise provided by the terms of the debenture, the quorum for any meeting of the holders of such debentures shall be two.
- (13) Where, pursuant to the terms of any debenture, the provisions of this Act and of the articles of a corporation giving the members of the corporation the right and power to vote have become void, those provisions shall, upon the expiration of the period, or upon the happening of any event, specified in that debenture or upon the redemption of the debenture and subject to there being no other debenture not redeemed under the terms of which such provisions are avoided, come into force and take effect in respect of that corporation in the same manner and to the same extent as before they became void; and thereupon the debenture holders shall cease to have the rights and powers referred to in the last preceding subsection.
- (14) A corporation may cause to be kept in any place outside Nauru a branch register of debenture holders.
- (15) The corporation shall lodge with the Registrar notice of the situation of the office where any branch register of debenture holders is kept and of any change in its situation and, if it is

discontinued, of its discontinuance, and any such notice shall be lodged within one month after the opening of the office or of the change or discontinuance, as the case may be.

- (16) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept.
- (17) A corporation may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the corporation or to the principal register.
- (18) Where a debenture is registered on a branch register the debenture and all rights arising therefrom shall be situated in the place where it is registered and unless otherwise expressed in the debenture the principal and interest is payable in the money of the place of registration calculated at the exchange rate at noon on the date on which it becomes due and payable.
- (19) The corporation shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at that office duly entered up from time to time a duplicate of its branch register.
- (20) The debentures registered in a branch register may be distinguished from the debentures registered in the principal register.
- (21) The costs of maintaining branch registers shall, unless the debentures otherwise provide, be borne ratably according to the number of debentures registered thereon by the holders of such debentures.
- (22) No debenture holder may transfer a debenture from one register to another but the corporation may transfer a debenture from one register to another provided that notice shall be given by the corporation to the debenture holder of such transfer and if the debenture holder by notice in writing to the corporation objects to such transfer within one month after such notice is given the amount of the principal and interest of the debenture shall become immediately due and payable.
- (23) So far as a debenture does not exclude or modify the terms and conditions set forth in Table 'C' of the Second Schedule a debenture when issued shall be issued upon the terms and conditions contained in Table 'C'.

- (24) A debenture shall state on its face whether it is issued upon the terms contained in Table 'C' of the Second Schedule to this Act or whether the terms of such Table are excluded in whole or in part and shall contain:
- (a) the name of the corporation;
 - (b) the date of issue of the debenture;
 - (c) a statement of the quorum for meetings of debenture holders, which if it differs from that provided in Table 'C' shall be a sufficient statement of the exclusion of that part of Table 'C';
 - (d) a statement of the name of the debenture holder where the debenture is not issued to bearer;
 - (e) a statement of the amount of principal for which such debenture is issued;
 - (f) the date upon which such principal is due and payable, if not payable on demand;
 - (g) the currency or currencies in which the principal and interest are payable; and
 - (h) the rate of interest, if any, *per annum* payable thereon;

and each debenture shall bear a serial number and be sealed or signed on behalf of the corporation or the branch of the corporation which issues it and the debt payable thereunder shall be a specialty debt of the corporation or, if issued by a branch of a corporation, of that branch.

- (25) A corporation may issue debentures upon terms that, at the option of the holder and subject to such other terms as are fixed upon the issue of the debenture or subsequently by agreement between the corporation and debenture holder and expressed in the debenture certificate, the holder may convert the debenture into shares in the corporation.
- (26) Regulations may be made:
- (a) restricting the right of corporations or any particular class of corporations to issue debentures which may be converted into shares; and
 - (b) prescribing the terms and conditions or the event or events upon which conversion shall or may take place.

67 Holding corporation not to issue debentures to public

No holding corporation shall offer or issue debentures to the public.

68 Perpetual debentures

- (1) A condition contained in any debenture or in any deed for securing any debenture shall not be invalid by reason only that the debenture thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.
- (2) Notwithstanding anything in any debenture or trust deed the security for any debenture which is irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable forthwith or at such other time as the Court directs if, on the application of the trustee for the holder of the debenture or, where there is no trustee, on the application of the holder of the debenture, the Court is satisfied that:
 - (a) at the time of the issue of the debenture the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient to discharge the principal debt and any interest thereon;
 - (b) the security, if realized under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding, regard being had to all prior charges and charges ranking *pari passu*, if any; and
 - (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the corporation is not making sufficient profit to pay the interest due on the principal sum or, where no definite rate of interest is payable, interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.
- (3) Subsection (2) of this section shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of a debenture or the relevant trust deed or under a compromise or arrangement between the corporation and creditors.

69 Reissue of redeemed debentures

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

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

- (2) After the reissue the person entitled to the debenture shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.
- (3) Where a corporation has deposited any of its debentures to secure advances on current accounts or otherwise the debentures shall not be deemed to have been redeemed by reason only of the account of the corporation having ceased to be in debit while the debentures remain so deposited.

70 Return of debentures

Every corporation which has issued debentures shall until they have all been redeemed and cancelled lodge with the Registrar at least once in every calendar year a return of debentures setting out the prescribed particulars.

71 Qualification of trustee for debenture holders

- (1) Subject to this section, every corporation which offers debentures to the public for subscription or purchase shall make provision in those debentures or in a trust deed relating to those debentures for the appointment of a registered trustee corporation as trustee for the holders of the debentures.
- (2) Where a borrowing corporation is required to appoint a trustee for the holders of any debentures in accordance with subsection (1) of this section it shall not allot any of those debentures until

the appointment has been made of a registered trustee corporation as trustee for the debenture holders and such trustee corporation has consented to act as trustee.

- (3) Without leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that trustee corporation is:
- (a) a director of the borrowing corporation;
 - (b) a shareholder that beneficially holds shares in the borrowing corporation;
 - (c) beneficially entitled to moneys owed by the borrowing corporation to it;
 - (d) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or
 - (e) a corporation that is by virtue of subsection (5) of section 4 deemed to be related to:
 - (i) any corporation of a kind referred to in paragraphs (a) to (d) inclusive of this subsection; or
 - (ii) the borrowing corporation.
- (4) Notwithstanding anything contained in subsection (3) of this section, that subsection shall not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only that:
- (a) the borrowing corporation owes to the trustee corporation or to a corporation that is deemed by virtue of subsection (5) of section 4 to be related to the trustee corporation any moneys so long as such moneys are:
 - (i) moneys that, not taking into account any moneys referred to in sub-paragraphs (ii) and (iii) of this paragraph, do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered to the public, exceed one-tenth of the amount of the debentures proposed to be offered to the public within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount owed by the

borrowing corporation to the holders of the debentures;

- (ii) moneys that are secured by, and only by, a first mortgage over land of the borrowing corporation, or by any debentures issued by the borrowing corporation to the public or by any debentures not issued to the public which are issued pursuant to the same trust deed as that creating other debentures issued at any time by the borrowing corporation to the public or by any debentures to which the trustee corporation, or a corporation that is by virtue of subsection (5) of section 4 deemed to be related to the trustee corporation, is not beneficially entitled; or
 - (iii) moneys to which the trustee corporation, or a corporation that is by virtue of subsection (5) of section 4 deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed;
- (b) the trustee corporation, or a corporation that is deemed by virtue of subsection (5) of section 4 to be related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are deemed by virtue of subsection (5) of section 4 to be related to it, do not carry the right to exercise more than one-tenth of the voting power at any general meeting of the borrowing corporation.
- (5) If default is made in complying with any provisions of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

72 Replacement of trustee

- (1) A trustee for debenture holders may resign.
- (2) Notwithstanding anything contained in any Act or in the relevant debentures or trust deeds a trustee for the holders of debentures shall not cease to be the trustee until another registered trustee corporation has been appointed to be the trustee for the holders of the debentures and has taken office as such.

- (3) Where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise the successor may be appointed in accordance with such provision providing such successor is a registered trustee corporation.
- (4) Where no provision has been made in the debenture or in the relevant trust deed for the appointment of any successor to a retiring trustee the borrowing corporation may appoint a successor which is a registered trustee corporation.
- (5) Notwithstanding anything in this Act or in any debentures or trust deed a borrowing corporation may with the consent of an existing trustee for the holders of the debentures appoint as successor to the trustee a registered trustee corporation.
- (6) Where the trustee for the holders of the debentures has ceased to exist or to be a registered trustee corporation or refuses to act or continue to act, the Registrar may, on an application being lodged with him by the borrowing corporation or the trustee for the holders of the debentures or the holder of any of the debentures or of his own motion, appoint a successor to the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be a registered trustee corporation or which has refused to act or continue to act as trustee as aforesaid providing such appointee is a registered trustee corporation.
- (7) Where a successor is appointed to be a trustee in place of any trustee the successor shall within one month after the appointment cause to be lodged with the Registrar notice in the prescribed form of the appointment.

73 Registered trustee corporations

- (1) The Minister may by proclamation declare a corporation, other than a holding corporation, to be a registered trustee corporation for the purposes of this Part of this Act.
- (2) No corporation shall act as or be a trustee under this Part of this Act unless it is a registered trustee corporation.

74 Contents of trust deed

- (1) Where a corporation offers debentures to the public for subscription the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing

corporation may, pursuant to those debentures or that deed, borrow and shall contain covenants by the borrowing corporation, or if the debentures do not or the trust deed does not expressly contain those covenants they or it shall be deemed to contain covenants by the borrowing corporation to the following effect:

- (a) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) that to the same extent as if the trustee for the holders of the debentures or any registered corporation auditor appointed by the trustee were a director of the corporation the borrowing corporation will:
 - (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and
 - (ii) give to it or him such information as is normally required with respect to all matters relating to the accounting or other records of the borrowing corporation;
- (c) that the borrowing corporation will, on the application of persons holding not less than one tenth in nominal value of the issued debentures to which the covenant relates delivered to its registered office, by giving notice delivered:
 - (i) to each of the holders of those debentures, other than debentures payable to bearer, at his address as specified in the register of debentures; and
 - (ii) by an advertisement in such newspaper as the Registrar shall direct addressed to all holders of those debentures;

summon a meeting of the holders of those debentures to consider the accounts and balance sheet for the last preceding annual accounting period of the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, such meeting to be held as prescribed by regulations, if any, and otherwise at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of those debentures present at the meeting; and

- (d) that all interest, principal and premium, if any, payable to the debenture holders under the terms of the said debentures or the relevant trust deed shall be paid to the debenture holders in Nauru free of all income tax, stamp duty or other tax, or impost or deductions of any kind whatsoever, notwithstanding any act or law of any other state to the contrary.
- (2) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying it against liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee having regard to the provisions of the trust deed or contract conferring on it any powers, authorities or discretion.
- (3) Subsection (2) of this section shall not invalidate:
 - (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
 - (b) any provision enabling such a release to be given:
 - (i) on the agreement thereto of a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act.

75 Duties of trustees

- (1) A trustee for the holders of debentures:
 - (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and each of its guarantor corporations which are or may be available by way of security or otherwise are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;

- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;
 - (c) shall ensure that the borrowing corporation complies with the provisions of Division 6 of this Part so far as they relate to the debentures and are applicable;
 - (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
 - (e) except where it is satisfied that the breach would not materially prejudice the security, if any, for the debentures or the interest of those holders, shall take steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy the breach of those covenants, terms and provisions;
 - (f) where the borrowing corporation or any of its guarantor corporations fails when so required by the trustee to remedy any breach of the covenant's terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation thereto; and
 - (g) where the borrowing corporation submits to those holders a compromise or arrangement shall give them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.
- (2) Where, after due enquiry, the trustee for the holders of the debentures at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may lodge an application in the prescribed form with the Registrar for an order under this subsection and the Registrar may, on such application, after giving the borrowing corporation an opportunity for making representations in relation to that

application, by order in writing served on the corporation at its registered office in the Republic, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Registrar thinks necessary for the protection of the interests of the holders of the debentures or the Registrar may, and, if the borrowing corporation so requires, shall, direct the trustee to lodge an application with the Registrar for an order under subsection (4) of this section and the trustee shall apply accordingly.

- (3) Where:
- (a) after due enquiry the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
 - (b) the corporation has contravened or failed to comply with an order made by the Registrar under subsection (2) of this section;

the trustee may, and, where the borrowing corporation has requested the trustee to do so, the trustee shall, lodge an application with the Registrar for an order under subsection (4) of this section.

- (4) Where an application is lodged with the Registrar under subsection (2) or subsection (3) of this section, the Registrar may, after giving the borrowing corporation an opportunity of being heard, by order do all or any of the following things, namely:
- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating their interests and such proposal for the protection of their interests as the trustee considers necessary or appropriate and for the purpose of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the Registrar thinks fit;
 - (b) direct that all or any actions or proceedings before any Court by or against the borrowing corporation be stayed, unless the Court otherwise orders; and before making an

order removing such stay, the Court shall give the Registrar an opportunity to be heard;

- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the corporation or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures or any part thereof;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of debentures, the members of the borrowing corporation or any of its guarantor corporations or the public;

but in making any such order the Registrar shall have regard to the rights of all creditors of the borrowing corporation.

- (5) The Registrar may vary or rescind any order made under subsection (4) of this section as he thinks fit.
- (6) A trustee in lodging any application with the Registrar shall have regard to the nature and kind of the security given when the debentures were offered to the public, and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.
- (7) A trustee may rely upon any certificate or report given or statement made by the solicitor, auditor or officer of the borrowing corporation or guarantor corporation if it has reasonable grounds for believing that such solicitor, auditor or officer was competent to give or make the certificate, report or statement.
- (8) For the purpose of the last preceding subsection '**solicitor**' includes a person who is qualified by the laws of the country where he gives the certificate or makes the report or statement to practise as a solicitor or as a legal practitioner, by whatsoever title he may be called, in that country; and '**auditor**' shall include a person properly appointed under the laws of the country where he gives the certificate or makes the report or statement to be, or to act as, the auditor of the corporation in that country.

76 Proper law

Notwithstanding any provisions therein to the contrary, all debentures issued in the Republic and the relevant trust deed relating to such debentures shall be governed by the law of the Republic.

77 Obligations of borrowing corporations

(1) Where there is a trustee for the holders of any debentures of a borrowing corporation the directors of the borrowing corporation shall:

- (a) at the end of a period not exceeding three months ending on a day which the trustee is hereby required to notify to the borrowing corporation in writing; and
- (b) at the end of each succeeding period thereafter, being a period of three months or such shorter time as the trustee may, in any special circumstances, allow;

prepare a report that relates to that period and complies with the requirements of subsection (2) of this section and within one month after the end of each such period cause to be lodged with the Registrar a copy of the report relating to this period.

(2) The report referred to in subsection (1) of this section shall be signed by not less than two of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security, or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state:

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded;
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deeds;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporation or

any of them have occurred which materially affect any security or charge within or created by the debentures or any trust deed and, if so, particulars of those circumstances;

- (e) whether or not there has been any material change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which pursuant to subsection (5) of section 4 is deemed to be related to the borrowing corporation, particulars of:
 - (i) the total amount so deposited or lent and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total amount owing to the borrowing corporation in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report;

distinguishing between deposits, loans and assumptions of liability which are secured and those which are unsecured, but not including any deposit or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing corporation.

- (3) Where there is a trustee for the holders of any debentures issued by a borrowing corporation the borrowing corporation and each guarantor corporation which has guaranteed the repayment of the moneys raised by the issue of those debentures shall, within forty-two days after the creation of the charge, in writing furnish the trustee for the holders of the debentures, whether or not any demand therefor by it has been made, with particulars of any charge created by the corporation or the guarantor corporation, as the case requires, and when the amount to be advanced upon the security of the charge is indeterminate, within fourteen days after the advance, with particulars of the amount or amounts in fact advanced, but

where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

- (4) The directors of every borrowing corporation which has issued debentures to the public and of every guarantor corporation which has guaranteed the repayment of the moneys raised by the issue of the debentures to the public shall at some date not later than ten months, or in the case of any particular corporation, not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee for the debenture holders for that corporation, after the expiration of each financial year of the corporation cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures a profit and loss account together with a detailed statement of outstanding liability under such debentures for the period from the end of that financial year and a balance sheet as at the end of the period to which the profit and loss account relates.
- (5) The provisions of section 134 and of section 136 and of any regulations made thereunder shall with such adaptations as are necessary be applicable to every profit and loss account and balance sheet made out and lodged pursuant to subsection (4) of this section as if that profit and loss account and balance sheet were a profit and loss account and balance sheet referred to in those sections or regulations but notwithstanding the foregoing provisions of this subsection where any guarantor corporation, being a corporation which is incorporated in the United Kingdom or any state or territory of the United States of America or in any state or territory of the Commonwealth of Australia or in any other state or territory declared for the purposes of this section by the Minister has lodged with the Board of Trade in the United Kingdom or the Security and Exchange Commission of the United States of America or the Registrar of Companies in the state or territory of the Commonwealth of Australia or the prescribed authority in any such other declared state or territory a profit and loss account and balance sheet for the relevant period that shall be sufficient compliance with the requirements of subsection (4) of this section if there is, with the consent of the trustee for the debenture holders, lodged with the Registrar and trustee for the debenture holders certified copies of the profit and loss account and balance sheet so lodged.

- (6) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1) of this section or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance sheet or profit and loss account and report as required by subsection (4) of this section within the time prescribed the trustee shall as soon as conveniently possible, lodge notice of that fact with the Registrar.

78 Obligation of guarantor corporation to furnish information

- (1) For the purpose of the preparation of a report that, by this Act, is required to be signed by or on behalf of the directors of a borrowing corporation or any of them, that corporation may, by notice in writing require any of its guarantor corporations to furnish it with any information relating to that guarantor corporation which is, by this Act, required to be contained in that report, and that guarantor corporation shall furnish the borrowing corporation with that information before such date, being a date not earlier than fourteen days after the notice is given, as may be specified in that behalf in the notice.
- (2) A corporation which fails to comply with the requirement contained in a notice given pursuant to subsection (1) of this section and every officer of that corporation who is in default is guilty of an offence.

79 Loans and deposits to be immediately repayable on certain events

- (1) Where in any prospectus issued in connection with an invitation to the public to subscribe for or to purchase debentures of a corporation there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied, the corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving such purpose or completing such project.
- (2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection (1) of section 77 of this Act.
- (3) Where it appears to the trustee for the holders of the debentures that such purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where

no such time was stated, within a reasonable time, the trustee may and, if in its opinion it thinks it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the corporation requiring it to repay the moneys so received by the corporation and, within one month after such notice is given, lodge with the Registrar a copy of such notice.

- (4) The trustee shall not give a notice pursuant to the provisions of subsection (3) of this section if it is satisfied:
- (a) that the purpose or project has been substantially achieved or completed;
 - (b) that the interests of the holders of the debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
 - (c) that the failure to achieve the purpose or project was due to circumstances, other than shortage of funds, beyond the control of the corporation that could not reasonably have been foreseen by that corporation at the time that the prospectus was issued.

Division 5 — Title and transfers

80 Nature of shares

The shares of any member in a corporation shall be personal estate, transferable in the manner provided by the articles, and shall not be of the nature of real estate.

81 Number of shares

- (1) Each share in a corporation shall be distinguished by an appropriate number.
- (2) Notwithstanding subsection (1) of this section:
 - (a) if at any time all the issued shares in a trading corporation or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or

- (b) if all the issued shares in a trading corporation are evidenced by certificates in accordance with the provisions of section 82 and each certificate is distinguished by an appropriate number and that number is recorded in the register of members none of those shares need have a distinguishing number.

82 Certificate to be evidence of title

- (1) A certificate under the corporate or official seal of a corporation or any branch thereof specifying any shares held by any member of the corporation shall be *prima facie* evidence of the title of the member to the shares.
- (2) Every share certificate or warrant shall be under the corporate or official seal of the corporation or a branch thereof and shall state:
 - (a) the name of the corporation and the authority under which the corporation is constituted;
 - (b) the address of the registered office of the corporation in Nauru or, where the certificate is issued by a branch of the corporation, the address of that branch; and
 - (c) the nominal value and the class of the shares and the extent to which the shares are paid up.
- (3) Failure to comply with this section shall not affect the rights of any holder of shares.
- (4) If default is made in complying with this section then the corporation and every officer of the corporation who is in default is guilty of an offence.

83 Corporation may have duplicate corporate seal

A corporation may if authorised by its articles have a duplicate corporate seal which shall be a facsimile of the corporate seal of the corporation with the addition on its face of the words 'Share Seal' and a certificate under such duplicate seal shall be deemed to be sealed with the corporate seal of the corporation for the purposes of this Act.

84 Loss or destruction of certificate

- (1) Subject to subsection (2) of this section, where a certificate or other document of title of shares or debentures other than bearer shares or debentures is lost or destroyed the corporation shall on payment of a fee not exceeding one dollar issue a duplicate certificate document in lieu thereof to the owner on his application accompanied by:
 - (a) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and
 - (b) an undertaking in writing that, if it is found or received by the owner, it will be returned to the corporation.
- (2) The directors of the corporation may, before accepting an application for the issue of a duplicate certificate or document, require the applicant:
 - (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of twenty-eight days after the publication of the advertisement to apply to the corporation for a duplicate; or
 - (b) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the corporation against loss following on the production of the original certificate or document;

or may require the applicant to do both of those things.
- (3) In the case of bearer share warrants duplicate warrants shall be issued only in accordance with the provisions of the articles.
- (4) In the case of bearer debentures duplicate certificates shall be issued only in accordance with the terms of issue of the debenture which has been lost or destroyed or the series of debentures of which that debenture forms part.

85 Instruments of transfer

- (1) Except in the case of bearer shares or debentures a corporation shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the

corporation, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the corporation has been transmitted by operation of law.

- (2) A transfer of the share, debenture or other interest of a deceased person made by his personal representative shall, although the personal representative is not himself a member of the corporation or holder of a debenture or other interest, be as valid as if he had been such a member or holder at the time of the execution of the instrument of transfer.
- (3) Bearer shares shall, except in so far as the articles make other provision in that behalf, be transferable by delivery of the warrants relating to those shares.
- (4) Bearer debentures shall except in so far as the trust deed relating to, or the terms of issue of, the debenture make other provision in that behalf be transferable by delivery.
- (5) A corporation may refuse to register a transfer of the share or debenture of a deceased person otherwise than by a personal representative of that person who has taken out or obtained probate or letters of administration of the estate of the deceased person.

86 Official Register

- (1) The Registrar shall establish a register to be known as the Official Register.
- (2) A member of a corporation may lodge with the Registrar for registration a share warrant, accompanied by a request in the prescribed form.
- (3) The Registrar shall number serially in order of lodgment all requests received under the provisions of this section.
- (4) The Registrar shall enter in the Official Register:
 - (a) the serial number of the request;
 - (b) the name of the corporation;
 - (c) the numbers of the shares and the class, if any, or description thereof;

- (d) the name of the beneficial owner thereof as set forth in the request;
 - (e) the date upon which the request was lodged and the time of its lodgment;
 - (f) the name and address of the person to whom a certificate as to the contents of the register in respect of the entry may be given;
 - (g) the name and address of the applicant; and
 - (h) the number of the caveat, if any, to which the entry is subject.
- (5) Upon making the entry in the Official Register, the Registrar shall cause the warrant to be marked with the fact and date of entry and with the registered number and return the same to the person lodging it, or as he directs.
- (6) Any person may lodge a caveat in the prescribed form against the entry of particulars of any share warrant in the Official Register and upon such share certificate or warrant being lodged for entry the Registrar shall enter the particulars relating thereto subject to the regulations as to caveats and shall give notice thereof to the person named in the caveat to receive notice.
- (7) As against the owner or bearer of the share warrant marked under the provisions of subsection (5) of this section, the details in the Official Register shall be conclusive evidence of the beneficial ownership thereof but entry shall not confer any priority on such equitable interest over other interests to which it was subject or over charges imposed by the law of the Republic.
- (8) Upon application by or on behalf of any of the persons whose names are entered in the Official Register under the provisions of paragraphs (f) and (g) of subsection (4) of this section or, in the case of their death or incapacity, of their personal representatives, the Registrar shall issue to the applicant or the person making the application on his behalf a certificate of the particulars registered relating to such entry.

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

87 Registration of transfer at request of transferor

- (1) On the request in writing of the transferor of any share or debenture other than a bearer share or debenture in a corporation, the corporation shall enter in the appropriate register the names of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- (2) On the request in writing of the transferor of a share or debenture other than a bearer share or debenture the corporation shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to bring it or them into the office of the corporation within a stated period, being not less than fourteen and not more than forty-two days after the date of the notice, to have the share certificate or debenture cancelled or ratified and the transfer registered or otherwise dealt with.
- (3) If any person refuses or neglects to comply with the notice given under subsection (2) of this section the transferor may lodge an application with the Registrar to issue a notice to that person to show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.
- (4) Regulations may be made providing for the issue of a new certificate, the cancellation of the old, and otherwise for regulating the rights of all persons in respect of the documents the subject of such notice.

88 Notice of refusal to register transfers

- (1) If a corporation refuses to register a transfer of any shares, debentures or other interests in the corporation, it shall within two months after the date on which the transfer was lodged with it send to the transferee notice of the refusal.

- (2) If default is made in complying with this section the corporation and every officer of the corporation who is in default is guilty of an offence.

89 Certification of transfers

- (1) The certification by a corporation of any instrument of transfer of shares, debentures or other interest in the corporation shall be taken as a representation by the corporation to any person acting on the faith of the certificate that there have been produced to the corporation such documents as on the face of them show a *prima facie* title to the shares, debentures or other interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or other interests.
- (2) Where any certification is expressed to be limited to forty-two days or any longer period from the date of certification, the corporation and its officers shall not, in the absence of fraud or wilful default or wilful neglect, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the corporation if the instrument of transfer has not within that period been lodged with the corporation for registration.
- (3) For the purposes of this section:
- (a) an instrument of transfer shall be deemed to be certified if it bears the words 'Certificate Lodged' or words to the like effect;
 - (b) the certification of an instrument of transfer shall be deemed to be made by a corporation if:
 - (i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the corporation's behalf; and
 - (ii) the certificate is signed by a person authorised to certify transfers on the corporation's behalf or by any officer either of the corporation or of a corporation so authorised; and
 - (c) a certificate that purports to be authenticated by a person's signature or initials, whether handwritten or not, shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person authorised

to use the signature or initials for the propose of certifying transfers on the corporation's behalf.

90 Duties of corporation with respect to issue of certificate

- (1) Every corporation shall within two months after the allotment of any of its shares or debentures, and within one month after the date on which a transfer, other than such a transfer as the corporation is for any reason entitled to refuse to register and does not register, of any of its shares or debentures is lodged with the corporation, complete, and have ready for delivery, the appropriate certificates, warrants and debentures in connection with the allotment or transfer, unless in the case of shares the conditions of issue otherwise provide.
- (2) If default is made in complying with this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence against this Act.
- (3) If any corporation on which a notice has been served requiring the corporation to make good any default in complying with the provisions of this section fails to make good the default within twenty-one days after the service of the notice, the Registrar may on the application of the person entitled to have the certificate or warrant for the shares or debentures delivered to him make an order directing the corporation and every officer of the corporation to make good the default within such time as is specified in the order, and the order may provide that all costs and expenses of and incidental to the application shall be borne by the corporation and by any officer of the corporation in default in such proportions as the Registrar thinks fit.

Division 6 — Registration of charges

91 Filing of charges

- (1) Subject to this Division, where a charge to which this section applies is created by a corporation there shall be lodged with the Registrar for filing within forty-two days after the creation of the charge a statement of the prescribed particulars and:
 - (a) the instrument, if any, by which the charge is created or evidenced; or

- (b) a copy thereof together with a statutory declaration certifying the execution of the charge and also verifying the copy as being a true copy of the instrument;

and if this section is not complied with in relation to the charge, the charge shall, so far as any security on the corporation's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the corporation.

- (2) Nothing in subsection (1) of this section shall prejudice any contract or obligation for repayment of the moneys secured by a charge and, when a charge becomes void under this section, the moneys secured thereby shall immediately become payable.
- (3) The charges to which this section applies are all charges whether fixed or floating on any asset of a corporation other than a charge already registered on some other public register kept in Nauru under the law of Nauru.
- (4) Where a charge created in Nauru affects property outside Nauru the instrument creating or purporting to create a charge or a copy thereof accompanied by the verifying statutory declaration may be lodged for filing under and in accordance with subsection (1) of 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 situate.
- (5) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a corporation, it shall be sufficient if there is lodged with the Registrar within forty-two days after the execution of the instrument creating the charge, or, if there is no such instrument, after the execution of the first debentures of the series, a statement containing the following particulars:
 - (a) the total amount secured by the whole series;
 - (b) the date of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
 - (c) a general description of the property charged;
 - (d) the names of the trustees, if any, for the debenture holders;

together with:

- (e) the instrument creating the charge; or
 - (f) a copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy.
- (6) For the purposes of subsection (5) of this section where more than one issue is made of debentures in the series, there shall be lodged with the Registrar within forty-two days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.
- (7) Where a charge requiring registration under this section is created before the lapse of forty-two days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of the debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Registrar that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

92 Duty to file charges

- (1) Documents and particulars required to be lodged for filing in accordance with section 91 may be lodged on behalf of the corporation concerned or on behalf of any person interested in the documents but, if default is made in complying with that section, the corporation and every officer of the corporation who is in default is guilty of an offence.
- (2) Where filing is effected on behalf of some person other than the corporation, that person shall be entitled to recover from the corporation the amount of any fees properly paid by him on the lodging for filing.

93 Filing of pre-existing charges

- (1) Where a corporation acquires any property which is subject to a charge of any such kind as would, if it had been created by the corporation after the acquisition of the property, have been required to be filed under this Division, or where a foreign corporation or a company incorporated in the Republic prior to the commencement of this Act becomes registered in the Republic under this Act and has prior to such registration created a charge which, if it had been created by the corporation or a company while it was registered in the Republic under this Act would have been required to be filed under this Division, or where a foreign corporation or a company incorporated in the Republic prior to the commencement of this Act becomes registered in the Republic under this Act and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the corporation or company after the acquisition and while it was registered in the Republic under this Act have been required to be filed under this Division, the corporation or company shall cause a statement of the prescribed particulars and the instrument by which the charge was created or is evidenced or a copy thereof accompanied by a statutory declaration containing such particulars as are prescribed and, where a copy is lodged, also verifying it as a true copy thereof to be lodged with the Registrar for filing within forty-two days after the date on which the acquisition is completed or the date of the registration of the corporation or company in the Republic, as the case may be.
- (2) If default is made in complying with this section, the corporation, the foreign corporation or the company and every officer of the corporation, the foreign corporation or the company who is in default is guilty of an offence.

94 Register of charges to be kept by Registrar

- (1) The Registrar shall keep a register of all the charges lodged for filing under this Division and shall enter in the register with respect to those charges the following particulars:
 - (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled such particulars as are required to be contained in a statement furnished under subsection (5) of section 91; and

- (b) in the case of any other charge:
 - (i) if the charge is a charge created by the corporation, the date of its creation and, if the charge was a charge existing on property acquired by the corporation, the date of the acquisition of the property;
 - (ii) the amount secured by the charge;
 - (iii) a description sufficient to identify the property charged; and
 - (iv) the name of the person entitled to the charge.
- (2) The Registrar shall issue a certificate of every charge filed stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to filing have been complied with.

95 Endorsement of certificate of registration on debentures

- (1) The corporation shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock, which is issued by the corporation and the payment of which is secured by a charge so registered:
 - (a) a copy of the certificate of filing; or
 - (b) a statement that filing has been effected and the date of filing.
- (2) Subsection (1) of this section shall not apply to any debenture or certificate of debenture stock issued by the corporation before the charge was filed.
- (3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section is guilty of an offence.

96 Filing of satisfaction and release of property from charge

- (1) Where, with respect to any registered charge:
 - (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or

- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the corporation's property or undertaking;

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

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

97 Extension of time and rectification of register of charges

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

98 Trading corporations to keep copies of charging instruments and register of charges

- (1) Every trading corporation shall cause a copy of every trading instrument creating any charge requiring to be filed under this Division to be kept at the registered office of the trading corporation, but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.
- (2) Every trading corporation shall keep at the registered office of the corporation a register of charges and enter therein all charges specifically affecting property of the trading corporation and all floating charges on the undertaking or any property of the trading corporation, giving in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled thereto.

- (3) The copies of instruments and the register of charges kept in pursuance of this section shall be open to the inspection of any creditor or member of the trading corporation without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee not exceeding one dollar for each inspection as is fixed by the trading corporation.
- (4) If default is made in complying with any of the provisions of this section, the trading corporation, and every officer of the trading corporation who is in default is guilty of an offence.

99 Documents made outside Nauru

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

100 Application of Division

A reference in this Division to a corporation shall be read as including a reference to a foreign corporation to which Part 10 applies, but nothing in this Division applies to a charge on property outside Nauru of a foreign corporation.

PART V — MANAGEMENT AND ADMINISTRATION

Division 1 — Office and name

101 Registered office of corporation

- (1) Every corporation shall have a registered office in Nauru and the name of the corporation shall be displayed outside the place where the registered office is situate and such office shall be open to the public for at least two hours each day between the hours of 8.00 a.m. and 5.00 p.m. Monday to Friday except upon a day which is a public holiday in Nauru.
- (2) Until otherwise provided by regulation such office shall be at the address of a registered corporation agent.

- (3) If default is made in complying with subsection (1) of this section the corporation and every officer of the corporation who is in default is guilty of an offence.
- (4) Notice in the prescribed form of the situation of the registered office and of any change therein shall be lodged with the Registrar within one month after the date of incorporation or of any such change as the case may be.

102 Publication of name

- (1) The name of a corporation shall appear in legible characters on:
 - (a) its seal; and
 - (b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the corporation;

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

- (2) If an officer of a corporation or any person on its behalf:
 - (a) uses or authorises the use of any seal purporting to be a seal of the corporation whereon its name does not so appear;
 - (b) issues or authorises the issue of any business letter, statement of account, invoice or official notice or publication of the corporation wherein its name is not so mentioned; or
 - (c) signs, issues or authorises to be signed or issued, on behalf of the corporation, any bill of exchange, promissory note, cheque or other negotiable instrument or any endorsement, order, receipt or letter of credit wherein its name is not so mentioned;

he shall be guilty of an offence and, where he has signed, issued or authorised to be signed or issued on behalf of the corporation any bill of exchange, promissory note or other negotiable instrument or any endorsement thereon or order wherein that name is not so mentioned, he shall in addition be personally liable to the holder of the instrument or order for the amount due thereon unless it is paid by the corporation.

Division 2 — Directors and officers

103 Directors

- (1) Every trading corporation shall have at least two directors, at least one of whom shall not be a registered director, and every holding corporation at least one director and any casual vacancy in the directors may, so far as the articles do not otherwise provide, be filled by a person appointed by the continuing director or directors or, if there be none, by the Registrar on a request being lodged by any member.
- (2) A director may be a corporation which may act by itself or through a nominee appointed in writing but a corporation shall not be appointed or act as a director of more than one other corporation unless it has been appointed to be a registered director under subsection (12) of this section.
- (3) The fees of a registered director shall be fixed by agreement between the registered director and the corporation of which he is a director.
- (4) A registered director shall not be subject to retirement but his office shall be vacated if:
 - (a) being a natural person, he dies or, being a corporation, it is wound up otherwise than for the purposes of reconstruction;
 - (b) being a natural person, he becomes bankrupt or insolvent in the Republic or elsewhere;
 - (c) being a natural person, he becomes of unsound mind or otherwise permanently incapable of carrying on his duties;
 - (d) being a natural person or a corporation, he, or it, is removed by the Registrar upon the request in writing of seventy-five per cent of the members of the corporation;
 - (e) being a natural person or a corporation, he, or it, resigns;
or
 - (f) being a natural person or a corporation, he, or it, is removed as a director in accordance with the articles.
- (5) A registered director shall be entitled to vote upon the resolutions of the board without disclosing his interest as director of other corporations.

- (6) Notice received by a registered director of a corporation shall not be deemed notice to that corporation unless it is given to such registered director specifically as notice to that corporation.
- (7) A registered director shall not disclose or use information he has obtained by reason of his office to any person or for any purpose other than in accordance with his duty as a director of the corporation except so far as he may be compelled by law so to do:
- Provided that the registered director may disclose to an appropriate public officer in Nauru or otherwise make use within Nauru only of information coming to his knowledge which he honestly believes suggests that a fraud is being or is likely to be practised by the corporation or by any of its members or directors or upon the corporation or any of its members.
- (8) The provisions hereinbefore enacted relating to the disclosure by a registered director shall *mutatis mutandis* apply to and bind all officers, servants, employees, agents and members of a registered director.
- (9) Any person acting in contravention of the provisions of this Act relating to disclosure by a registered director shall be guilty of an offence against this Act.
- (10) The fees of a registered director payable by a corporation shall be paid to him in the Republic in such manner and at such times as shall be agreed between him and the corporation and shall be a charge upon the assets of the corporation ranking in priority next after fees owing by the corporation to the Registrar.
- (11) Notwithstanding any other provision of this Act or of the regulations to the contrary a registered director shall not be liable as an officer of the corporation for any penalty provided for in this Act nor for anything done or omitted by him in the carrying out of his office nor for any damage caused to or suffered by any person or corporation howsoever arising otherwise than by reason of his wilful misconduct, his wilful default or his wilful neglect.
- (12) The Minister shall by notice in the Gazette appoint such persons or corporations as he thinks fit to be registered directors under this Act and the Registrar shall keep a register of the names and addresses of such appointees.

104 Restrictions on naming

A person shall not be named as a director or proposed director in the articles of a corporation or in a prospectus, unless before the registration of the articles or the issue of the prospectus he has by himself or by his agent authorised in writing for the purpose signed and caused to be lodged with the Registrar a consent in writing to act as a director.

105 Qualification of directors

- (1) Every director who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles.
- (2) Unless otherwise provided by the articles, the qualification of any director of a corporation must be held by him solely and not as one of several joint holders.
- (3) A registered director shall not be required to hold qualification shares notwithstanding anything contained in the articles.
- (4) A director shall vacate his office if he has not within the period referred to in subsection (1) of this section obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.
- (5) A person vacating office under this section shall be incapable of being re-appointed as director until he has obtained his qualification.

106 Validity of acts of directors and officers

The act of a director or manager or secretary shall be valid notwithstanding any defect that may be discovered in his appointment or qualification.

107 Power to restrain certain persons from managing corporations

- (1) The Minister may by notice in the Gazette order that a person by reason that in Nauru or elsewhere:
 - (a) he has committed an offence in connection with the promotion, formation or management of a corporation or company;

- (b) he has committed any acts involving fraud or dishonesty;
or
- (c) he is an undischarged bankrupt or insolvent;

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

- (2) A corporation shall not thereafter be entitled to appoint or retain a person so disqualified as a director and a person so disqualified who acts within the period stated in the proclamation without the leave of the Minister first had and obtained as a director or promoter of, or is in any way, whether directly or indirectly, concerned or takes part in the management of, a corporation shall be guilty of an offence.

108 Disclosure of interests in contracts, property, offices, etc.

- (1) Subject to this section, every director of a trading corporation and, if the articles of any holding corporation so require, every director of that holding corporation who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the corporation shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the corporation or cause to be circulated in writing to all the other directors particulars of his interest.
- (2) The requirements of subsection (1) of this section shall not apply in any case where the interest of the director consists only of being a member or creditor of a corporation which is interested in a contract or proposed contract with the first-mentioned trading corporation if the interest of the director may properly be regarded as not being a material interest.
- (3) For the purpose of this section a registered director shall be deemed to be interested in all contracts or proposed contracts with any corporation of which he is a director and to have given notice thereof to all the other directors and to have declared the nature of his interest and to have given particulars thereof in accordance with the provisions of subsection (1).

- (4) A director of a corporation shall not be taken to be interested, or to have been at any time interested, in any contract or proposed contract by reason only:
- (a) in a case where the contract or proposed contract relates to any loan to the corporation, that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
 - (b) in a case where the contract or proposed contract has been or will be made with, for the benefit of, or on behalf of a corporation which by virtue of the provisions of section 4 is deemed to be related to the corporation, that he is a director of that corporation;

but this subsection shall not affect the operation of any provision in the articles of the corporation.

- (5) For the purposes of subsection (1) of this section a general notice given to the directors of a corporation by a director to the effect that he is an officer or a member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure it is brought up and read at the next meeting of the directors after it is given.
- (6) Every director of a trading corporation and, if the articles of any holding corporation so require, every director of that holding corporation who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the corporation or cause to be circulated in writing to the other directors the fact and the nature, character and extent of the conflict but the provisions of this subsection shall not apply to a registered director.
- (7) The declaration shall be made at the first meeting of the directors held:
- (a) after he becomes a director; or
 - (b) if already a director, after he commences to hold the office or to possess the property, as the case requires;

whether or not it has been already circulated in writing.

- (8) Every declaration under this section shall be recorded in the minutes of the meeting at which it was made.
- (9) Except as provided in subsection (3) of this section, this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the corporation or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director, but registered directors, whether of a trading or holding corporation, are hereby excluded from the operation thereof.
- (10) Subject to the provisions of subsection (2) of section 109, a registered director shall not be restricted by any rule of law from having any interest in contracts with a corporation of which he is a director or from holding office or acquiring and possessing properties or rights involving duties or interests in conflict with his duties or interests as a director.

109 Duty and liability of officers

- (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.
- (2) An officer of a corporation shall not make use of any information acquired by virtue of his position as an officer to gain directly or indirectly an improper advantage for himself or to cause detriment to the corporation.
- (3) An officer who commits a breach of any of the provisions of this section is:
 - (a) liable to the corporation for any profit made by him and for any damage suffered by the corporation as a result of the breach of any of those provisions; and
 - (b) guilty of an offence.
- (4) Unless the articles of the corporation otherwise provide, a trading corporation shall not save as may be sanctioned by a general meeting or by a resolution in writing signed by or on behalf of members holding together shares conferring more than half of the total voting power of the issued shares:
 - (a) make a loan to a director of the corporation or of a corporation which by virtue of subsection (5) of section 4 is deemed to be related to that corporation or enter into

any guarantee or provide any security in connection with any loan made to such a director by any other person;

- (b) make to any director any payment by way of compensation for loss of office as a director of that corporation or of a subsidiary of that corporation or as consideration for or in connection with his retirement from any such office; or
- (c) make any payment to any director of a corporation in connection with the transfer of the whole or any part of the undertaking or property of the corporation:

Provided that the restrictions of this subsection shall not apply to any *bona fide* payment:

- (i) by way of damages for breach of contract or any compromise for any claim for damages for breach of contract; or
- (ii) by way of pension, superannuation or retiring allowance or any other payment pursuant to an agreement particulars whereof have been disclosed to the corporation in general meeting or pursuant to an agreement made between the corporation and the director before he became a director of the corporation and under the terms of which he agreed to be a director of the corporation:

And provided further that no director shall be personally liable in respect of any payment made in breach of the provisions of this section otherwise than as a result of his own wilful misconduct, wilful default or wilful neglect.

- (5) This section is in addition to and not in derogation of any other rule of law relating to the duty or liability of directors or officers of a corporation.

110 Secretary

- (1) The Minister may by notice in the Gazette appoint persons resident in Nauru or corporations incorporated in Nauru to be registered secretaries.
- (2) No person or corporation shall act as or be appointed as a resident secretary unless he or it has been appointed a registered secretary.

- (3) Every corporation shall have one or more secretaries one of whom shall be a resident secretary and such resident secretary shall be a registered secretary.
- (4) The resident secretary shall be responsible for the compliance by the corporation with the requirements of this Act in relation to the lodging of all documents with the Registrar, the maintenance of the corporation's records at the registered office and the opening of the registered office to the public and dealing with communications addressed to the corporation at its registered office:

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

- (5) The resident secretary shall be entitled of his own motion to obtain the assistance of a registered corporation agent or a barrister and solicitor in the interpretation of this Act and in the making and completion of reports, returns and documents and shall be entitled by himself or his agent to have access to such information as is required to make and complete the same and to furnish such information relating to the affairs of the corporation to a registered corporation agent or a barrister and solicitor for that purpose.
- (6) The corporation shall forthwith pay any costs, charges and expenses incurred on its behalf by the resident secretary in respect of any matters required or permitted by him to be done under this Act.
- (7) The salary of the resident secretary shall be fixed by agreement between the corporation and the resident secretary and shall be paid in Nauru in such manner and at such time as shall be agreed between the resident secretary and the corporation; and such salary shall be a charge upon the assets of the corporation ranking in priority next after fees owing by the corporation to the Registrar.
- (8) Every secretary of a corporation shall be appointed by the directors.
- (9) If the resident secretary of any corporation has reasonable cause to believe that a fraud is being or might be practised by

the corporation or by any of its members or directors he shall be entitled to report thereon to the Registrar.

111 Register of directors and secretaries

- (1) Every corporation shall keep at its registered office a register of its directors, registered directors and secretaries.
- (2) The register shall contain with respect to each director and registered director:
 - (a) in the case of an individual, his present surname and any former surname and his present other names and any former other names and his usual residential address;
 - (b) in the case of a corporation, its corporate name and the address of its registered office.
- (3) The register shall contain with respect to each secretary:
 - (a) in the case of an individual, his present surname and any former surname and his present other names and any former other names and his usual residential address;
 - (b) in the case of a corporation, its corporate name and the address of its registered office.
- (4) The register shall be open to the inspection of any director, member and auditor of the corporation without charge.
- (5) The corporation shall lodge with the Registrar:
 - (a) within one month after incorporation a return in the prescribed form containing in relation to its directors, registered directors and secretaries the particulars set out in subsections (2) and (3) of this section;
 - (b) within one month after a person named in a return ceases to be a director, a registered director or secretary of the corporation, a return in the prescribed form notifying the Registrar of the change and containing with respect to each then director, registered director and secretary of the corporation the particulars set out in subsections (2) and (3) of this section and the date of cessation; and
 - (c) within one month after a person becomes a director, registered director or a secretary of the corporation, a return in the prescribed form notifying the Registrar of that

fact and containing the particulars set out in subsections (2) and (3) of this section and the date of appointment.

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

Division 3 — Meetings and proceedings

112 Annual general meeting of trading corporation

- (1) A general meeting of every trading corporation to be called the 'annual general meeting' shall, in addition to any other meeting, be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting, but so long as a corporation holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Registrar on the lodging of an application by the corporation may, if for any special reason he thinks fit so to do, extend the period of fifteen months or eighteen months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.
- (3) If default is made in holding an annual general meeting:
 - (a) the trading corporation and every officer of the trading corporation in default is guilty of an offence; and

- (b) the Registrar may on the application of any member order a general meeting of the trading corporation to be called.

113 Convening of extraordinary general meetings on requisition

- (1) The directors of a corporation, notwithstanding anything in its articles, shall on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings forthwith proceed to convene an extraordinary general meeting of the corporation to be held as soon as practicable, but in any case not later than two months after the receipt by the corporation of the requisition.
- (2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the corporation, and may consist of several documents in like form each signed by one or more requisitionists.
- (3) If the directors do not within twenty-one days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the date of deposit of the requisition.
- (4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene the meeting shall be paid to the requisitionists by the corporation, and any sum so paid shall be retained by the corporation out of any sums due or to become due from the corporation by way of fees or other remunerations in respect of their services to such of the directors as were in default.
- (5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Act in the case of special resolutions.

114 Calling of meetings

- (1) So far as the articles do not make other provision in that behalf, two or more members holding not less than one-tenth of the issued share capital may call a meeting of the corporation.

- (2) A meeting of a corporation or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than fourteen days or such longer period as is provided in the articles.
- (3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2) of this section, be deemed to be duly called if it is so agreed:
 - (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; or
 - (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving a right to attend and vote.
- (4) So far as the articles do not make other provision in that behalf, notice of every meeting shall be served on every member having a right to attend and vote thereat in the manner in which notices are required to be served by Table A in the case of a trading corporation and by Table B in the case of a holding corporation.
- (5) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceedings at a meeting.

115 Articles as to right to demand a poll

- (1) Any provision contained in a corporation's articles shall be void in so far as it would have the effect:
 - (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
 - (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made:
 - (i) by not less than five members having the right to vote at the meeting;

- (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
 - (iii) by a member or members holding shares in the corporation conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right; or
 - (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy to be received by the corporation or any other person more than six days before a meeting or adjourned meeting in order that the appointment may be effective thereat.
- (2) The instrument appointing a proxy to vote at a meeting of a corporation shall be deemed to confer authority to demand or join in demanding a poll and for the purposes of subsection (1) of this section a demand by a person as proxy for a member of the corporation shall be deemed to be the same as a demand by the member.

116 Quorum, chairman, voting, etc at meetings

- (1) So far as the articles do not make other provisions in that behalf:
- (a) in the case of a holding corporation one member of the corporation, and in the case of a trading corporation, two members, personally present shall be a quorum;
 - (b) any member elected by the members present at a meeting may be chairman thereof; and
 - (c) every member shall have one vote in respect of each share held by him.
- (2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.
- (3) A corporation may by resolution of its directors or other governing body:
- (a) if it is a member of a corporation, authorise such person as it thinks fit to act as its representative either at a

particular meeting or at all meetings of the corporation or of any class of members; or

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

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

- (4) Where:

- (a) a person present at a meeting is authorised to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3) of this section; and
- (b) the person is not otherwise entitled to be present at the meeting;

the corporation shall, for the purposes of subsection (1) of this section, be deemed to be personally present at the meeting.

- (5) A certificate under the seal of the corporation shall be *prima facie* evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to the provisions of subsection (3) of this section.

117 Proxies

- (1) Subject to subsection (2) of this section, a member of a corporation entitled to attend and vote at a meeting of the corporation, or at a meeting of any class of members of the corporation, shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote instead of the member at a meeting and a proxy appointed to attend and vote instead of a member shall have the same right as the member to speak at the meeting.

- (2) A member of a holding corporation shall not be entitled to appoint another person as his proxy under subsection (1) of this section except:
 - (a) in accordance with the articles of the corporation; or
 - (b) with the leave of the Registrar.
- (3) In every notice calling a meeting of a trading corporation or a meeting of any class of members of a trading corporation, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of the member, and that a proxy need not also be a member; and, if default is made in complying with this subsection as respects any meeting, every officer of the corporation who is in default shall be guilty of an offence against this Act.
- (4) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the corporation's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy is guilty of an offence.
- (5) No person shall be guilty of an offence under subsection (4) of this section by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
- (6) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period not exceeding ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office and by lodging their shares with such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

- (7) Any trustee corporation may notify the Registrar in writing that it is willing to be appointed as trustee of a voting trust and the Registrar upon payment of the prescribed fee may supply to any person a list of trustee corporations which have so notified him.
- (8) Where a voting trust has been created in respect of any of the shares of a corporation, that corporation shall, so long as such voting trust continues, upon request of any member supply that member with the name and address of the trustee of such voting trust.

118 Power of Registrar to order meeting

- (1) If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act, the Registrar may, either of his own motion, or on an application lodged on behalf of any director or of any member who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the Registrar thinks fit, and may give such ancillary or consequential directions as he thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting of a trading corporation.
- (2) Any meeting called, held and conducted in accordance with any order made pursuant to this section shall, for all purposes, be deemed to be a meeting duly called, held and conducted.

119 Circulation of members' resolutions, etc.

- (1) Subject to this section a corporation shall on the requisition in writing of such number of members of the corporation as is specified in subsection (2) of this section and, unless the trading corporation otherwise resolves, at the expense of the requisitionists:
 - (a) give to the members of the trading corporation entitled to have notice of any general meeting sent to them notice of any resolution which may properly be moved and which it is intended will be moved at that meeting;
 - (b) circulate to members entitled to have notice of any general meeting of the trading corporation sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution of the business to be dealt with at that meeting; and

- (c) furnish any holder of a bearer share of the corporation who applies for a copy of the agenda of the general meeting with a copy of the resolution and the statements, if any, referred to in paragraph (b).
- (2) The number of members necessary for a requisition under subsection (1) of this section shall be:
 - (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
 - (b) in the case of a trading corporation, not less than one hundred members holding shares in the corporation on which there has been paid up an average sum per member of not less than one hundred dollars.
 - (3) Notice of a resolution referred to in subsection (1) of this section shall be given, and any statement so referred to shall be circulated, to members of the corporation entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notices of the meeting.
 - (4) A corporation shall not be bound under this section to give notice of any resolution or to circulate any statement unless:
 - (a) a copy of the requisition signed by the requisitionists or two or more copies which between them contain the signatures of all the requisitionists is deposited at the registered office of the corporation not less than six weeks before the meeting; and
 - (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the corporation's expenses in giving effect thereto;

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the corporation, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

- (5) The corporation shall not be bound under this section to circulate any statement if, on an application on behalf of the corporation or of any other person who claims to be aggrieved

lodged with him, the Registrar is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Registrar may make such order as to the corporation's costs and expenses of and incidental to an application in accordance with this section as he thinks fit.

- (6) Notwithstanding anything in the corporation's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental failure to give it to one or more members.
- (7) In the event of any default in complying with the provisions of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

120 Special resolutions

- (1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than twenty-one days' notice specifying the intention to propose resolution as a special resolution has been duly given.
- (2) Notwithstanding the provision of subsection (1) of this section, if it so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.
- (3) At any meeting at which a special resolution is submitted, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) At any meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded:
 - (a) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in

the articles, but it shall not in any case be necessary for more than five members to make the demand; or

- (b) if no such provision is made by the articles, by three members so entitled, or by one member or two members so entitled, if that member holds or those two members together hold not less than ten per centum of the paid up share capital of the corporation.
- (5) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the articles of the corporation.
- (6) For the purposes of this section, a notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in manner provided by this Act or by the articles.
- (7) If the articles of a corporation so provide, a resolution in writing signed by not less than three-fourths of such members as are entitled to vote shall be deemed to be and shall be as valid as a special resolution as one passed at a general meeting in accordance with the provisions of subsection (1) of this section.

121 Resolution requiring special notice

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

122 Filing of copies of certain resolutions and agreements

- (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the Registrar and recorded by him.
- (2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.
- (3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of fifty cents or such less sum as the corporation may direct.
- (4) This section shall apply to:
 - (a) special resolutions;
 - (b) resolutions which have been agreed to by all the members of a corporation, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
 - (c) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members.
- (5) If a corporation fails to comply with subsection (1) of this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence.
- (6) If a corporation fails to comply with subsection (2) or subsection (3) of this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence in respect of each copy in respect of which default is made.
- (7) For the purposes of the two last foregoing subsections, a liquidator of the corporation shall be deemed to be an officer of the corporation.

123 Resolutions at adjourned meetings

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

124 Minutes of proceedings

- (1) Every corporation shall cause:
 - (a) minutes of all proceedings of general meetings and of proceedings of its directors to be entered in books kept for that purpose; and
 - (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting or by one of the directors who were parties to the proceedings.
- (2) Any minute so entered that purports to be signed as provided in subsection (1) of this section shall be evidence of the proceedings to which it relates.
- (3) Unless the Registrar otherwise directs all such minute books shall be kept at the registered office of the corporation but duplicates of the minute books or any of them may be kept elsewhere.
- (4) Where minutes have been so entered and signed, then until the contrary is proved:
 - (a) the meeting shall be deemed to have been duly held and convened;
 - (b) all proceedings had thereat shall be deemed to have been duly had; and
 - (c) all appointments of officers or liquidators made thereat shall be deemed to be valid.
- (5) Where the articles permit a resolution to be passed otherwise than at a meeting if assented to in writing by the persons specified in the articles, the document containing such assent shall be entered in the minute book.

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

125 Inspection of minute book

- (1) Unless the Registrar otherwise directs, the books containing the minutes of proceedings of any general meeting shall be kept by the corporation at its registered office and shall be open for inspection by any member without charge.
- (2) Any member shall be entitled to be furnished, within fourteen days after he has made a request in writing in that behalf to the corporation, with a copy of any minute of proceedings at a general meeting at a charge not exceeding one dollar for every two hundred words of part thereof.
- (3) If any copy required under this section is not so furnished, the corporation and every officer of the corporation who is in default is guilty of an offence.

Division 4 — Register of members

126 Register and index of members

- (1) Every corporation shall keep a register of its members and, except in respect of any bearer shares issued by it, enter therein:
- (a) the names and addresses of the members, and a statement of the shares held by each member, distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (b) the date at which the name of each person was entered in the register as a member;
 - (c) the date at which any person who ceased to be a member during the previous seven years so ceased to be a member; and
 - (d) the date of every allotment of shares to members and the number of shares comprised in each allotment.

- (2) Notwithstanding anything in subsection (1) of this section, a corporation may keep the names and particulars relating to persons who have ceased to be members of the corporation separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.
- (3) The register of members shall be *prima facie* evidence of any matters inserted therein as required or authorised by this Act.
- (4) Every trading corporation having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within twenty-eight days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.
- (5) The index shall, in respect of each member, contain a sufficient indication to enable the account of that member registered to be easily found.
- (6) If default is made in complying with this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

127 Where register to be kept

- (1) Unless the Registrar otherwise directs, the register of members and index, if any, shall be kept at the registered office of the corporation.
- (2) Every corporation shall within twenty-one days after the register and index, if any, are first kept at a place other than the registered office lodge with the Registrar notice of the place where the register and index, if any, are kept and it shall within fourteen days after any change in the place at which the register and index, if any, are kept lodge with the Registrar notice of the change.

128 Inspection and closing of register

- (1) A corporation may, on giving not less than twenty-one days' notice by advertisement in such manner as the articles provide or in default of such provision in such manner as the Registrar may approve, close the register of members or any class of members for any time or times, but so that no part of the

register shall be closed for more than thirty days in the aggregate in any calendar year.

- (2) The register and index shall be open to the inspection of any member without charge and, in the case of a trading corporation, of any other person on payment for each inspection of one dollar or such less sum as the corporation requires.
- (3) Any member or, in the case of a trading corporation, any member or other person may request the corporation to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of one dollar or such less sum as the corporation requires for every two hundred words or part thereof required to be copied and the corporation shall cause any copy so requested by any person to be sent to that person within a period of thirty days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the corporation.
- (4) If any copy so requested is not sent within the period prescribed by subsection (3) of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

129 Consequence of default by agent

Where the register of members is kept at some place other than the registered office of the corporation and, by reason of any default of the person in charge of such office, the corporation fails to comply with section 127 or section 128 or of any requirements of this Act as to production of the register, that person shall be liable to the same penalties as if he were an officer of the corporation who was in default.

130 Power of Registrar to rectify register

- (1) If:
 - (a) the name of any person is without sufficient cause entered in or omitted from the register; or
 - (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member;

the person aggrieved or any member of the corporation may lodge an application with the Registrar for rectification of the

register, and the Registrar may refuse the application or may order rectification of the register and payment by the corporation of any damages sustained by any party to the application and may order any party to bear the costs and expenses of and incidental to the application of any other party.

- (2) On any application lodged under subsection (1) of this section the Registrar may decide:
 - (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the corporation on the other hand; and
 - (b) generally, any question necessary or expedient to decide for the rectification of the register.

131 Limitation of liability of trustee, etc., registered as owner of shares

- (1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in Nauru as the holder of a share in any corporation may become registered as the holder of that share as trustee, executor or administrator of that estate and shall, in respect of that share, be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.
- (2) Any trustee, executor or administrator of the estate of any deceased person who was equitably entitled to a share in any corporation, being a share registered in a register or branch register kept in Nauru, may with the consent of the corporation and of the registered holder of that share become registered as the holder of that share as trustee, executor or administrator of that estate and shall in respect of the share, be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.
- (3) Shares in a corporation registered in a register or branch register kept in the Republic and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

- (4) Except as provided in this section, no notice of any trust express, constructive or implied shall be entered on the register or branch register and no liabilities shall be affected by anything done in pursuance of subsection (1), subsection (2) or subsection (3) of this section and the corporation concerned shall not be affected with notice of any trust by anything so done.

132 Branch registers

- (1) A corporation may cause to be kept in any place outside Nauru a branch register of members.
- (2) The corporation shall lodge with the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation and, if it is discontinued, of its discontinuance, and any such notice shall be lodged within one month after the opening of the office or of the change or discontinuance, as the case may be.
- (3) Whenever any branch register is kept outside Nauru a duplicate copy thereof shall be kept at the registered office of the corporation in Nauru or at such other place within Nauru as the principal register of members is kept and within seven days of the making of any entry in a branch register a duplicate copy of such part of such branch register as is affected by such entry showing such entry shall be sent to the corporation at its registered office in Nauru and the duplicate copy of the branch register kept within Nauru shall be amended accordingly.
- (4) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement required before the register is closed shall be inserted in some newspaper circulating generally in the district where the branch register is kept or in such other manner as the Registrar may approve.
- (5) Subject to the provisions of this section with respect to the duplicate register, the shares registered in the branch register may be distinguished from the shares registered in the principal register, and any dealing with a share on a register shall be noted in that register.
- (6) (a) The provisions of paragraph (b) of this subsection shall apply to such corporation and during such period or periods as the Registrar by order declares but not otherwise. Any such order shall only be made upon the application of the corporation. The Registrar may revoke

any order made under this paragraph and shall revoke the same upon the application of the corporation. A copy of any order made under this paragraph and of any revocation thereof shall be kept by the corporation at its registered office in Nauru and shall be open to inspection by any person entitled to inspect the register of members.

- (b) A duplicate copy of the branch register shall be sent to the corporation at its registered office in Nauru so as to be received there by it not later than the expiry of one calendar month after the opening of the branch register and further duplicate copies thereof shall be sent to its corporation at its registered office in Nauru so as to be received by it thereafter once in each succeeding calendar month and the date of receipt of each such duplicate copy by the corporation at its registered office in Nauru shall be marked on such duplicate copy and such duplicate copy shall be filed by the resident secretary of the corporation in the corporation's records kept in Nauru. In the event of any one of the duplicate copies of the register required by this subsection to be sent to the corporation at its registered office in Nauru not being received at its registered office in the Republic within the times herein specified, the last duplicate copy of the branch register shall become and be deemed to be part of and shall be included in the principal register in lieu of the branch register kept outside Nauru theretofore and the branch register kept outside Nauru shall thereupon cease to be a register of the corporation and shall be destroyed by the person having custody thereof.
- (7) Where the provisions of paragraph (b) of subsection (6) apply the Registrar may upon the application of a corporation and subject to such conditions, if any, as he sees fit to impose dispense a corporation from compliance with the whole or any part of the provisions of paragraph (b) of subsection (6) and the principal register and every branch register of the corporation shall be kept in accordance with such conditions as the Registrar shall impose and shall be noted with the terms of such conditions and such conditions may be varied by the Registrar from time to time on the application of the corporation or of any shareholder, debenture holder or registered director of the corporation. A copy of any dispensation made under this subsection and any variation thereof shall be kept by the corporation at its registered office in Nauru and shall be by any person entitled to inspect the register of members.

- (8) A corporation may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the corporation in the same place or to the principal register.
- (9) If by virtue of the law in force in any other country any corporation incorporated under that law keeps in Nauru a branch register of its members, regulations may be made declaring that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modification specified in the regulations, apply to and in relation to any such branch register kept in Nauru as they apply to and in relation to the registers of corporations under this Act and thereupon those provision shall apply accordingly.
- (10) If default is made in complying with this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

Division 5 — Annual return

133 Annual return

- (1) Every trading corporation shall make a return, called the '**annual return**', containing the prescribed particulars and accompanied by such copies of documents as are required to be included in the return under the regulations, if any, made under this section and such of the certificates and other particulars prescribed in such regulations as are applicable to the corporation.
- (2) Every holding corporation shall make a return, called the '**annual return**', containing the prescribed particulars and accompanied by such copies of documents as are required to be included in the return under the regulations, if any, made under this section and such of the certificates and other particulars prescribed in such regulations as are applicable to the corporation.
- (3) The annual return shall be in accordance with the form prescribed by regulation for the purpose or as near thereto as circumstances admit and shall be made up to a date not earlier than the twenty-eighth day before the date of lodgement.
- (4) In the case of a corporation keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the annual

return, be included in annual return made next after copies of those entries are received in the registered office of the corporation.

- (5) The annual return signed by a director or secretary of the corporation shall be lodged with the Registrar and the prescribed fee payable therefor paid at least once in each calendar year not later than twenty-eight days prior to the anniversary of the date of its incorporation.
- (6) Every annual return shall in the case of a holding corporation be accompanied by a certificate from a registered corporation auditor stating:
 - (a) that proper accounts of the corporation for the financial period ending on the date specified have been kept and a balance sheet and profit and loss account for that period prepared and audited by such auditor or some other named registered corporation auditor; and
 - (b) that the director giving the certificate under the provisions of subsection (7) of this section has been furnished with a copy of such accounts;

and the registered corporation auditor shall retain for six years a copy of the accounts to which his certificate relates.

- (7) Every annual return shall in the case of a holding corporation be accompanied by a certificate from a director stating that he has considered the audited accounts mentioned in the last preceding subsection and certifying, with or without qualifications:
 - (a) that the same show that the corporation was solvent at the date to which they relate;
 - (b) that he is unaware of any circumstances which render those accounts untrue; and
 - (c) that no circumstances have occurred since the date to which those accounts relate which would render the corporation insolvent;

if such a certificate cannot be given without qualification, the respect in which it is qualified shall be set out.

- (8) If a corporation fails to comply with this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

PART VI — ACCOUNTS AND AUDIT

Division 1 — Accounts

134 Accounts to be kept

- (1) Every corporation shall cause proper accounts and records to be kept with respect to:
 - (a) all sums of money received and expended by the corporation, specifying the items or matters in respect of which the receipt or expenditure took place;
 - (b) all sales and purchases of goods by the corporation;
 - (c) all assignments of rights or assumption of liabilities by the corporation;
 - (d) all transactions of the corporation, or affecting the assets or liabilities of the corporation; and
 - (e) the assets and liabilities of the corporation.
- (2) The accounts shall be kept at the registered office of the corporation or at such other place as the directors think fit and shall at all times be open to inspection by any director and shall be kept in such manner as to enable them to be conveniently and properly audited.
- (3) The Registrar may in any particular case order that the accounting and other records of a corporation be open to inspection by a registered corporation auditor acting for a director, but only upon an undertaking in writing given to the Registrar that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.
- (4) Any person who, being a director of a corporation other than a registered director, fails to take all reasonable steps to secure compliance by the corporation with the requirements of this section, section 135 and section 136 or, whether a registered director or not, has by his own wilful act been the cause of any default by the corporation thereunder is guilty of an offence.

135 Accounts to be laid before meeting or circulated

- (1) Every trading corporation shall supply to any of its members who makes written application therefor a copy of the most recent audited profit and loss account and balance sheet together with a copy of the auditor's comments, if any, thereon.
- (2) At any meeting of any corporation at which any member so requires, the directors shall either lay before the meeting a profit and loss account of the corporation and a balance sheet thereof made up to a date not more than twelve months before the date of the meeting, or shall, at an adjournment of the meeting held not later than two months thereafter, lay before such adjourned meeting a profit and loss account and balance sheet made up to the original date of the meeting, or such other more remote date not being more than twelve months before the original date of the meeting as the Registrar upon application lodged with him may fix.
- (3) In the case of a corporation the articles of which require that a dividend be declared only upon a resolution of members, a member may before the passing of any such resolution:
 - (a) at a meeting at which he is present in person or by proxy;
or
 - (b) by notice in writing served at the registered office of the corporation;

require that a balance sheet and profit and loss account made up to a date not earlier than two months before the date of a resolution declaring a dividend be circulated to members and thereupon no such resolution shall be passed until twenty-one days after circulation thereof.

- (4) A balance sheet or profit and loss account of any corporation laid before a meeting or sent to members shall be accompanied by all documents required by this Act to be attached thereto.

136 Regulations as to accounts

Accounts of a corporation shall so far as regulations prescribe:

- (a) be prepared in the manner prescribed;
- (b) be presented to such meetings as may be prescribed;
- (c) be lodged at the times and in the manner prescribed;

- (d) be accompanied by such declarations and reports by such persons as may be prescribed;
- (e) have attached thereto such annexures, schedules or details as may be prescribed;
- (f) be circulated amongst such persons as are prescribed.

Division 2 — Audit

137 Auditor to be appointed

- (1) The directors of a corporation shall:
 - (a) where the corporation is incorporated before this section comes into force, within ninety days after this section comes into force, and
 - (b) where the corporation is incorporated after, or on the date when, this section comes into force, within ninety days of its incorporation;

appoint a registered corporation auditor to be the auditor of that corporation and such auditor shall hold office until the expiration of the audit period expiring next after the first annual general meeting of the corporation, if the corporation be a trading corporation, and next after eighteen months from the date of incorporation if the corporation be a holding corporation.

- (2) At the conclusion of his first term of office the auditor, if willing and eligible, shall be reappointed for a further two audit periods.
- (3) No person shall be appointed to be, or to act as, the auditor of any corporation without his prior written consent.
- (4) Every corporation shall, whenever it appoints an auditor, lodge with the Registrar within thirty days of the appointment a notice thereof in the prescribed form accompanied by the auditor's written consent.

138 Appointment and removal of auditors

- (1) Subject to the provisions of the last preceding section, every corporation shall appoint a registered corporation auditor to be auditor of the corporation for two audit periods upon the previous auditor ceasing to hold office.

- (2) A corporation may, at a general meeting of which notice has been given to the auditor and the Registrar not less than twenty-eight days before the date of the meeting but not otherwise, remove an auditor from office but shall at the meeting at which the auditor is removed or at a general meeting held within one month thereafter appoint a registered corporation auditor approved by the Registrar to take the original auditor's place.
- (3) Unless the articles otherwise provide, in the case of a trading corporation the auditor for the first audit period shall be appointed by the directors and the auditors for subsequent audit periods shall be appointed by general meetings but in the case of a holding corporation the auditor shall for every audit period be appointed by the directors.

139 Auditor ceasing to be registered

- (1) Unless the Registrar otherwise directs, or the directors otherwise resolve, if an auditor ceases to be a registered corporation auditor he shall continue to hold office as auditor of the corporation until completion of the audit work for the audit period during which he ceased to be a registered corporation auditor.
- (2) Where an auditor ceases to be registered and does not continue in office, as aforesaid, the corporation shall immediately appoint another registered corporation auditor at a fee to be fixed by agreement between such other auditor and the directors and such other auditor shall be the auditor of the corporation for the purposes of this Act for the period then current and, subject to making proper appraisal and review of the work of the auditor ceasing to be registered, such other auditor shall be entitled to use and rely upon the work of the first-mentioned auditor done up to the time of the appointment of the new auditor.
- (3) For the purposes of subsection (2) of this section it is hereby declared that it is an implied term of the contract between the corporation and its auditor that the auditor shall make available to another auditor taking office either in lieu of or in addition to the first-mentioned auditor during the course of an audit period all working papers relating to the affairs of the corporation made and kept by the first-mentioned auditor during his tenure of office.

140 Term of office when auditor ceases to be registered

An auditor appointed in addition to or in place of an auditor ceasing to hold office as a registered corporation auditor shall hold office during the period for which the auditor so ceasing would have held office had he not so ceased.

141 Partners of auditors

Where a registered corporation auditor is a member of a partnership carrying on the practice of accountants and auditors and one or more members of that partnership is or are the auditors of the corporation, another member of such partnership being a registered corporation auditor may, if the directors so resolve, be substituted as auditor of the corporation for the auditor ceasing to be registered with the written consent of the substitute auditor.

142 Remuneration of auditor

- (1) The fees and expenses of an auditor of a trading corporation appointed at a general meeting shall be fixed by that meeting or in the manner directed by that meeting and the fees and expenses of an auditor appointed otherwise than by a general meeting shall be fixed by the directors.
- (2) The fees and expenses of an auditor of a holding corporation may be fixed by the directors unless the auditor requires such fees and expenses to be fixed by a resolution of the members of the corporation.

143 Auditor may attend meetings

An auditor of a corporation shall be entitled to attend and address all meetings of members of a corporation.

144 Auditor to audit

- (1) Every auditor of a corporation shall carry out an audit in respect thereof in each audit period.
- (2) Every auditor shall report to the members as to his audit and matters disclosed thereby and as to every balance sheet and profit and loss account and as to any other accounts put before the members.

- (3) Every auditor shall give such further reports and information as are required by regulations made under this Act.

145 Powers of auditors

Every auditor shall obtain such information and explanations in relation to the affairs of the corporation of which he is auditor and of any other corporation which by virtue of subsection (5) of section 4 is deemed to be a related corporation as he reasonably requires to complete his audit and the corporation shall take all proper steps to ensure that he is able to obtain such information and explanations and to have access to such books and records as he requires for his audit.

146 Powers, duties and obligations of auditors

The powers, duties and obligations of auditors provided by this Act are in addition to any powers, duties and obligations specified in the articles of the corporation and all auditors shall be entitled to be furnished with a copy of such articles and shall be required to make themselves acquainted with the terms thereof.

PART VII — ARRANGEMENTS AND RECONSTRUCTIONS

147 Power to compromise with creditors and members

- (1) Where a compromise or arrangement is proposed between a corporation and its creditors, or any class of them or between the corporation and its members or any class of them the Registrar may, on an application being lodged by the corporation or by any creditor or member of the corporation, or, in the case of a corporation being wound up, by the liquidator, order a meeting of the creditors or a class of creditors or of members of the corporation or a class of members to be summoned in such manner as he may direct.
- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting agrees to any compromise or arrangement, the compromise or arrangement shall, if approved by order of the Registrar or, in the case of corporations being wound up compulsorily, by the Court, be binding on all the creditors or class of creditors or on all the members or class of members, as the case may be, and also on the corporation or, in the case of a corporation in the

course of being wound-up, on the liquidator and contributories of the corporation.

- (3) The Registrar or the Court, as the case may be, may grant his or its approval to a compromise or arrangement subject to such alterations or conditions as is thought fit.
- (4) An order under subsection (2) of this section shall have no effect until an office copy of the order is lodged with the Registrar and the prescribed fee paid and, upon being so lodged, the order shall take effect on and from the date of filing of the same or such earlier date as the Registrar may determine and as may be specified in the order.
- (5) A copy of any order made under subsection (2) of this section shall be annexed to every copy of the memorandum and articles, if any, of the corporation issued after the order has been made.
- (6) Where any such compromise or arrangement, whether or not for the purposes of or in connection with a scheme for the reconstruction of any corporation or corporations or the amalgamation of any two or more corporations, has been proposed, the directors of the corporation shall:
 - (a) if a meeting of the members of the corporation by resolution so directs, instruct such experts or registered corporation agents or both as are named in the resolution to report on the proposal and forward their report or reports to the directors as soon as may be; and
 - (b) make such report or reports available at the registered office of the corporation for inspection by the shareholders and creditors of the corporation at least fourteen days before the date of any meeting ordered by the Registrar to be summoned as provided in subsection (1) of this section.
- (7) Every corporation which makes default in complying with subsection (5) or subsection (6) of this section and every officer of a corporation who is in default is guilty of an offence.
- (8) Where no order has been made or resolution passed for the winding-up of a corporation and any such compromise or arrangement as is referred to in subsection (1) of this section has been proposed between the corporation and its creditors, or any class of such creditors, the Registrar may, in addition to any of his other powers, on an application lodged by the corporation or by any member or creditor of the corporation restrain further

proceedings in any action or proceeding against the corporation except by leave of the Court in which the action or proceeding is pending or of the Registrar and subject to such terms as the Court or the Registrar imposes.

(9) In this section:

'arrangement' includes a reorganisation of the share capital of a corporation by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

'corporation' means any corporation or society liable to be wound up under this Act.

148 Information as to compromise with creditors and members

- (1) Where a meeting is summoned under section 147 there shall:
- (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating the material interests of the directors, whether as directors or as members or as creditors of the corporation or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and
 - (b) in every notice summoning the meeting which is given by advertisement, be included either such statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such statement.
- (2) Where the compromise or arrangement affects the rights of debenture holders the statement shall give the like explanation with respect to the trustee for the debenture holders as, under subsection (1) of this section, a statement is required to give with respect to the directors.
- (3) Where a notice given by advertisement includes a notification that copies of such statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the corporation free of charge with a copy of the statement.

- (4) Each director and each trustee for debenture holders shall give notice to the corporation of such matters relating to himself as may be necessary for the purposes of this section.
- (5) Where default is made in complying with any requirements of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.
- (6) For the purpose of subsection (5) of this section, a liquidator of the corporation and trustee for debenture holders shall be deemed to be officers of the corporation.
- (7) Notwithstanding the provisions of subsection (5) of this section, a person shall not be liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

149 Provisions for facilitating reconstruction and amalgamation of corporations

- (1) Where an application is lodged with the Registrar or made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Registrar or the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any corporation or corporations or the amalgamation of any two or more corporations and that under the scheme the whole or any part of the undertaking or the property of any corporation concerned in the scheme, in this section referred to as the 'transferor corporation', is to be transferred to another corporation, in this section referred to as the 'transferee corporation', the Registrar or the Court may either by order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:
 - (a) the transfer to the transferee corporation of the whole or any part of the undertaking and of the property or liabilities of the transferor corporation;
 - (b) the allotting or appropriation by the transferee corporation of any shares, debentures, policies or other like interests in that corporation which under the compromise or arrangement are to be allotted or appropriated by that corporation to or for any person;

- (c) the continuation by or against the transferee corporation of any legal proceedings pending by or against the transferor corporation;
 - (d) the dissolution, without winding up, of the transferor corporation;
 - (e) the provision to be made for any persons who, within such time and in such manner as the Registrar or the Court directs, dissent from the compromise or arrangement;
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (2) Where an order made under this section provides for the transfer of property or liabilities, then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become liabilities of, the transferee corporation free, in the case of any particular property if the order so directs, from any charge which is by virtue of the compromise or arrangement to cease to have effect.
- (3) Where an order is made under this section, every corporation in relation to which the order is made shall lodge an office copy thereof with the Registrar and pay the prescribed fee within fourteen days after the making of the order and every corporation which makes default in complying with this subsection and every officer of the corporation who is in default is guilty of an offence.
- (4) In this section **'property'** includes property rights and powers of every description.

150 Takeover offers

Regulations may be made by the Cabinet for regulating takeover offers.

PART VIII — RECEIVERS AND MANAGERS

151 Qualification for appointment as receiver

- (1) In this Part **'receiver'** includes a receiver of the property of a corporation or any part thereof or of the property of a foreign corporation registered in Nauru and a manager appointed by or on behalf of a secured creditor or by the Court.

- (2) Unless regulations made under this Act otherwise provide, a corporation shall not be appointed a receiver unless it is an official liquidator.

152 Directions and liability

- (1) A receiver appointed under the powers contained in any instrument may lodge an application with the Registrar for directions in relation to any matter arising in connection with the performance of his functions.
- (2) A receiver shall be personally liable on any contract entered into by him in the performance of his functions except insofar as the contract otherwise provides and shall be entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

153 Notification of appointment of receiver

- (1) If any person obtains an order for the appointment of a receiver, or appoints such receiver under any powers contained in any instrument he shall, within fourteen days after he has obtained the order or made the appointment, lodge notice of the fact with the Registrar.
- (2) Where any person appointed receiver under the powers contained in any instrument ceases to act as such he shall within twenty-one days thereafter lodge with the Registrar notice to that effect.
- (3) Every person who makes default in complying with the requirements of this section is guilty of an offence.

154 Statement that receiver appointed

- (1) Where a receiver has been appointed, every invoice, order for goods or business letter issued by or on behalf of the corporation by the receiver or liquidator of the corporation, being a document on or in which the name of the corporation appears, shall contain a statement immediately following the name of the corporation that a receiver has been appointed.
- (2) If default is made in complying with this section, the corporation and every officer and every liquidator of the corporation or

receiver who knowingly and wilfully authorises or permits the default is guilty of an offence.

155 Provisions as to information where receiver appointed

- (1) Where a receiver is appointed:
 - (a) he shall forthwith send notice to the corporation of his appointment;
 - (b) there shall within fourteen days after receipt of the notice, or such longer period as may be allowed by the Registrar or by the receiver, be made out and submitted to the receiver in accordance with the provisions of section 156 a statement in the prescribed form as to the affairs of the corporation; and
 - (c) he shall within one month after receipt of the statement:
 - (i) lodge with the Registrar a copy of the statement and of any comments he sees fit to make;
 - (ii) send to the corporation a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and
 - (iii) where he is appointed by or on behalf of holders of debentures of the corporation, send to the trustees, if any, for those holders a copy of the statement and his comments thereon.
- (2) Subsection (1) of this section shall not apply in relation to the appointment of a receiver to act with an existing receiver or in the case of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall include references to his successor.

156 Special provisions as to statements made to receiver

- (1) The statement as to the affairs of a corporation required by section 155 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the corporation's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively and the date when the securities were respectively given and such further or other information as may be prescribed.

- (2) The statement shall be submitted by, and be verified by statutory declaration of, one or more persons who were at the date of the receiver's appointment the directors of the corporation or by such of the persons hereafter in this section mentioned as the receiver may require to submit and verify the statement, that is to say:
- (a) persons who are or have been officers;
 - (b) persons who have taken part in the formation of the corporation at any time within one year before the date of the receiver's appointment;
 - (c) persons who are in the employment of the corporation or who have been in the employment of the corporation within that year, and in the opinion of the receiver are capable of giving the information required;
 - (d) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the corporation to which the statement relates.
- (3) Any person making a statement and statutory declaration shall be allowed and shall be paid by the receiver, or his successor, out of his receipts such costs and expenses incurred in and about the preparation and making of the statement and statutory declaration as the receiver, or his successor, may consider reasonable subject to an appeal to the Registrar.
- (4) If any person makes default in complying with the requirements of this section, he is guilty of an offence.

157 Lodging of accounts of receivers

- (1) Every receiver shall:
- (a) within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as receiver lodge with the Registrar a detailed account in the prescribed form showing:
 - (i) his receipts and his payments during each period of six months, or where he ceases to act as receiver during the period from the end of the period to which the last preceding account related or from the date

of his appointment, as the case may be, up to the date of his so ceasing;

- (ii) the aggregate amount of both receipts and payments during all preceding periods since his appointment; and
 - (iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment in the case of the first account, and at the expiration of every six months after his appointment, and where he has ceased to act as receiver at the date of his so ceasing and his estimate of the total value of all assets of the corporation which are subject to that instrument; and
- (b) before lodging such account verify by statutory declaration all accounts and statements referred to therein.
- (2) The Registrar may of his own motion or on the application of the corporation or a creditor cause the accounts to be audited by a registered corporation auditor appointed by the Registrar and for the purposes of the audit the receiver shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books kept by the receiver and any document or other record relating thereto.
- (3) The Registrar may make an order for the payment of the costs of an audit ordered by him and, where he causes the accounts to be audited upon the request of the corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

158 Payment of certain debts out of assets subject to floating charge in priority to claims under charge

- (1) Where a receiver is appointed on behalf of the holders of any debentures of a corporation secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to any floating charge then if the corporation is not at the time in the course of being wound-up, debts which in every winding-up are preferential debts shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as they would be in a winding-up.

- (2) Any payments made under this section shall be recouped as far as may be out of the assets of the corporation available for payment of general creditors.

PART IX — WINDING-UP

Division 1 — Preliminary

159 Modes of winding-up

- (1) A corporation may be wound up either:
 - (a) compulsorily; or
 - (b) voluntarily.
- (2) Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding-up, apply to the winding-up of a corporation in either of those modes.

160 Republic bound

The provisions of this part relating to the remedies against the property of a corporation, the priorities of debts and the effect of an arrangement with creditors shall bind the Republic.

161 Certificate as to winding-up

- (1) The Registrar shall, upon application lodged by any person in the prescribed form and upon payment of the prescribed fee, issue a certificate stating whether at the date of the certificate a corporation is being wound-up, or a petition has been presented for the winding-up of the corporation and is pending.
- (2) Notice of the issue and effect of such certificate may be given by telegram, cable, telex or wireless if the applicant for the certificate so requests and pays the cost thereof.
- (3) Neither the Republic nor the Registrar nor any officer or servant of the Republic shall be liable by reason of any error, mistake, inaccuracy or delay in or in the giving of the certificate or notice by whatsoever cause or means arising, unless such error, mistake, inaccuracy or delay was wilful and fraudulent.

162 Effect of winding-up

- (1) A corporation shall from the commencement of the winding-up cease to carry on business, except so far as, in the opinion of the liquidator, is required for the beneficial winding-up thereof, but the corporate state and corporate powers of the corporation shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved and until it is dissolved it shall renew its certificate of incorporation whenever it expires.
- (2) On the commencement of the winding-up of any corporation all the powers of the directors shall cease except so far as the liquidator of the corporation approves the continuance thereof.
- (3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, other than the transfer of a bearer share, and any alteration in the status of the members made after the commencement of the winding-up shall be void.

163 Avoidance of disposition of property

Any disposition of the property of the corporation including things in action made after the commencement of the winding-up shall, unless the Court otherwise orders, be void.

164 Costs of the winding-up

- (1) All proper costs, charges and expenses of and incidental to the winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the corporation in priority to all other claims of whatsoever nature.
- (2) The Court may, in the event of the assets being insufficient to satisfy such costs, charges and expenses make an order as to the payment out of the assets of such costs, charges and expenses in such order of priority as the Court thinks just.

165 Custody and vesting of corporation's property

On the commencement of any winding-up or when a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the corporation is or appears to be entitled and, if there is no liquidator, all the property of the corporation shall be in the custody of the Minister.

166 Delivery of assets

The Court may require any contributory, trustee, receiver, banker, agent or officer of the corporation to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the corporation is *prima facie* entitled.

167 Avoidance of certain transactions

Any attachment, sequestration, distress or execution put in force against the estate or effects of the corporation after the commencement of its winding-up shall, unless the Court otherwise orders, be void.

168 Pending proceedings

After the commencement of the winding-up no action or proceeding shall be proceeded with or commenced nor shall any judgment be executed against a corporation unless the Court otherwise orders.

169 Power to stay winding-up

- (1) At any time after the commencement of a winding-up the Court may, on the application of any person, order that the winding-up be stayed.
- (2) The order staying or refusing to stay the winding-up shall be made on such terms and conditions as the Court sees fit.
- (3) A copy of every order under this section shall be lodged by the liquidator with the Registrar forthwith.

170 Delegation to liquidator of Registrar's powers

Unless rules of court otherwise provide, the Court may order that the powers and duties imposed on the Court by this Part in respect of:

- (a) the holding and conducting or meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;

- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

may be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not without the special leave of the Court rectify the register of members or make any call.

171 Liability as contributories of present and past members

- (1) Upon a corporation being wound up, every present and past member shall be liable to contribute to the assets of the corporation to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves, subject to the other provisions of this section and to the following qualifications:
 - (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up;
 - (b) a past member shall not be liable to contribute in respect of any debt or liability of the corporation contracted after he ceased to be a member;
 - (c) a past member shall not be liable to contribute unless the existing members have failed to satisfy the contributions required to be made by them in pursuance of this Act within forty-two days from notice being given of such contributions in the manner prescribed;
 - (d) upon a past member becoming liable to contribute pursuant to this subsection, he shall be immediately liable to pay the amount of such contribution to the liquidator of the corporation and thereupon shall be entitled to receive from the liquidator a certificate of the names of the existing members who have failed to contribute within the time provided by paragraph (c) and such certificate shall be conclusive evidence of the right of such past member to recover from such existing members jointly and severally the amount of the contribution paid by him;

- (e) in the case of a trading corporation no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
 - (f) in the case of a holding corporation, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member other than of an amount sufficient for the payment of the costs, charges and expenses of the winding-up and of any fees or penalties outstanding under this Act and not recovered by the liquidator or Registrar, as the case may be, from the assets of the corporation;
 - (g) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the corporation payable to that member in the case of a composition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (2) Nothing in this section shall limit the liability of a director apart from his liability as a member in so far as that liability is imposed by this Act, the articles of the corporation or otherwise.
 - (3) Notwithstanding anything contained in this Act, in the articles of any corporation or otherwise provided by law, no registered director of a corporation shall be liable to contribute otherwise than as a contributory upon the winding-up of the corporation for any cause whatsoever other than wilful misconduct, wilful default or wilful neglect.
 - (4) Notwithstanding anything in this Act or in the articles of the corporation contained or otherwise provided by law, no trustee corporation incorporated in Nauru shall be liable to contribute to the assets of any corporation of which it is a member or past member as trustee upon a winding-up thereof otherwise than to the extent of the assets in its hand held, after all its proper charges and costs are deducted, for the *cestui que trust*; but such *cestui que trust* shall be liable and, if more than one, jointly and severally liable to pay the balance of any call remaining unpaid thereafter and the trustee corporation shall supply to the liquidator upon request all the information available to it relating to the *cestui que trust*.

- (5) Notwithstanding anything in this Act or in the articles of the corporation contained or otherwise provided by law the Authority shall not be liable to contribute to the assets of any corporation of which it is a member or past member.

172 Nature of liability of contributory

The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the time when calls are made for enforcing the liability.

173 Contributories in case of death or bankruptcy of member

- (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the corporation in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.
- (2) If in the Republic or elsewhere a contributory is adjudged bankrupt or insolvent or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories:
- (a) his trustee shall represent him for all the purposes of the winding-up and shall be a contributory accordingly; and
 - (b) there may be proved against his estate the estimated value of his liability for future calls as well as those already made.

174 Distribution of assets

Subject to the provisions of the last preceding section and subject to the provisions of this Act as preferential payments, the property of a corporation shall, on its winding-up, be applied in satisfaction of its liabilities equally, and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the corporation.

175 Admission of claims to proof

- (1) No claim shall be admitted to proof in a winding-up unless:
 - (a) a judgment of a court outside the Republic in respect thereof could be registered in any Court of the Republic and thereupon enforced in the Republic; or
 - (b) such claim would be enforceable by proceedings in a Court of the Republic.
- (2) Where the identity or address of any member is not known to him, the liquidator shall pay any money due to such member into the unclaimed moneys fund established by the Republic for the purpose and the provisions of subsections (2), (3), (4) and (5) of section 193 shall apply *mutatis mutandis* to such moneys.

176 Proof and ranking of claims

Regulations shall be made by the Cabinet to provide for the proof and ranking of claims in a winding-up.

177 Claims of creditors and distribution of assets

- (1) The Court or, in a voluntary winding-up, the liquidator may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved:

Provided that the Court of the liquidator, as the case may be, or, in a voluntary winding-up, the Registrar may from time to time extend the date fixed and fix a new date.
- (2) Any surplus after payment of all liabilities of the corporation, including the costs, charges and expenses of the winding-up, shall be distributed by the liquidator amongst the persons entitled thereto but, in the event of a dispute as to the persons entitled thereto, the liquidator, after receiving notice of such dispute, shall refer the dispute to the Court and shall be discharged by payment in accordance with the order of the Court.
- (3) If no notice of dispute as to the persons entitled to a distribution of the surplus or any part thereof is received by the liquidator prior to making such distribution, whether interim or final, the liquidator shall be discharged from any liability to any person in respect of the amount so distributed but without prejudice to the

rights of such person to recover the same from the person receiving the distribution.

Division 2 — Compulsory winding-up

178 Application for winding-up

- (1) A corporation, whether or not it is being wound-up voluntarily, may be wound up compulsorily under an order of the Court.
- (2) The Court may order the winding-up of a corporation upon the petition of:
 - (a) the corporation;
 - (b) any creditor, including a contingent or prospective creditor;
 - (c) a contributory;
 - (d) the liquidator;
 - (e) the Minister;
 - (f) a director of the corporation;or any two or more of those persons.
- (3) No petition shall be filed in the Court unless it is accompanied by a copy thereof.
- (4) The Clerk of the Court, upon a petition being filed, shall forthwith deliver a copy thereof to the Registrar.
- (5) Pending the making of an order consequent on any such petition the Court by order may appoint an official liquidator as provisional liquidator of the corporation.
- (6) Notice of any order made on or in respect of a petition shall immediately be lodged with the Registrar and served on the liquidator named in such order and on the corporation.
- (7) Regulations may be made by the Cabinet restricting the grounds upon which a petition may be presented by any or all of the persons referred to in subsection (2) of this section or the time within which petitions may be presented on any one or more grounds and specifying the circumstances in which a winding-up order may or may not be made or shall or shall not be made.

179 Circumstances in which corporation may be wound up compulsorily

- (1) Subject to the provisions of the last preceding section the Court may order that a corporation be wound up if:
- (a) the corporation has by special resolution resolved that it be wound up under the order of the Court;
 - (b) default is made by the corporation in lodging any annual or other statutory return or lodging any statutory report or in holding any statutory meeting;
 - (c) the corporation acquires the whole of its own shares or being a holding corporation has no member, or being a trading corporation has fewer than two members, provided always in the case of a holding corporation it shall not be liable to be wound up under this paragraph so long as debentures of the kind referred to in subsection (12) of section 66 are issued and not redeemed;
 - (d) the corporation is unable to pay its debts;
 - (e) directors have acted in the affairs of the corporation in their own interests rather than in the interests of the members as a whole or in any other manner whatsoever which appears to be unfair or unjust to other members;
 - (f) the Court is of opinion that it is just and equitable that the corporation should be wound up;
 - (g) on the petition of the Minister it appears that:
 - (i) the corporation has persistently been in breach of this Act;
 - (ii) the corporation has failed to pay any penalty or fee which under this Act it is liable to pay;
 - (iii) the corporation has failed to renew its certificate of incorporation for a period of ninety days after the same should have been renewed;
 - (iv) a director or officer of the corporation has failed to pay any penalty imposed on him under this Act;
 - (v) the corporation has failed to make good a default within sixty days after service on it of a notice under the provisions of subsection (7) of section 12 requiring it to do so;

- (vi) having been converted from a holding corporation into a trading corporation under the provisions of subsection (2) of section 29, the corporation has failed to comply with the provisions of this Act;
 - (vii) being a trading corporation, it has for a continuous period of not less than three months had no director other than a registered director;
 - (viii) the corporation has been ordered by the Cabinet to cease to carry on business, or any part of its business, under the provisions of section 247; or
- (h) on the petition of a director of a trading corporation who is a registered director it appears that the corporation no longer has any director other than a registered director.
- (2) A corporation shall be deemed to be unable to pay its debts if:
- (a) a creditor by assignment or otherwise to whom the corporation is indebted in a sum exceeding \$200.00 then due has served on the corporation by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the corporation to pay the sum so due and the corporation has for sixty days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
 - (b) execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the corporation is returned unsatisfied in whole or in part; or
 - (c) it is proved to the satisfaction of the Court that the corporation is unable to pay its debts; and in determining whether a corporation is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the corporation.
- (3) No debt which cannot be admitted in a winding-up may found a petition on the ground that the corporation is unable to pay its debts.

180 Commencement of compulsory winding-up

- (1) Where before the order for compulsory winding-up a voluntary winding-up has commenced, the compulsory winding-up of the corporation shall be deemed to have commenced when the voluntary winding-up commenced.

- (2) In any other case the compulsory winding-up shall be deemed to have commenced:
- (a) where a provisional liquidator has been appointed and an order for the corporation to be wound up is subsequently made, at the time when such appointment is made;
 - (b) where no provisional liquidator has been appointed, at the time when the order is made for the corporation to be wound up.

181 Payment of costs

Upon a winding-up order being made, the liquidator shall, unless the Court otherwise orders, reimburse the petitioner out of the assets of the corporation the reasonable costs incurred by the petitioner in the proceedings for winding-up.

182 Costs relating to winding-up

Subject to the provisions of section 181 the costs of a winding-up petition shall be in the discretion of the Court.

183 Copy of order to be lodged

- (1) The petitioner shall within thirty days after the making of the winding-up order lodge a copy of the order with the Registrar and pay the prescribed fee and shall cause a copy thereof to be served upon the corporation and within fourteen days thereafter deliver to the liquidator a further copy together with a statement certified by a registered corporation agent that the requirements of this section have been complied with.
- (2) If default is made in complying with subsection (1) hereof, the petitioner is guilty of an offence.

184 Appointment of liquidator

- (1) The Court before making an order for the winding-up of a corporation shall appoint a liquidator of the corporation and the Court may require him to give such security as it thinks fit; such liquidator shall, unless the Court for special reason orders otherwise, be an official liquidator.
- (2) The Court may by order appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order and the provisional liquidator

so appointed shall have and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be provided by the order appointing him or any subsequent order of the Court and any reference in this Act to a liquidator shall include a provisional liquidator.

185 Validation of proceedings in voluntary winding-up

Unless the Court otherwise orders, all things done in any proceedings voluntary winding-up preceding the making of a winding-up order shall be deemed to have been validly done.

186 Statement of affairs

- (1) Upon a winding-up order being made there shall be made out and verified in the prescribed form and manner and submitted to the liquidator a statement as to the affairs of the corporation as at the date of the winding-up order showing:
 - (a) the particulars of its assets, debts and liabilities;
 - (b) the names and addresses of its creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further information as is prescribed or as the liquidator requires.
- (2) The statement shall be submitted by one or more of the persons who, at the date of the winding-up order, were directors, or by such of the persons hereinafter mentioned as the liquidator, subject to the direction of the Registrar, requires, that is to say persons:
 - (a) who are or have been the officers of the corporation;
 - (b) who have taken part in the formation of the corporation at any time within one year before the date of the winding-up order;
 - (c) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the corporation to which the statement relates; or

- (d) where a voluntary winding-up preceded the order, the liquidator in such winding-up.
- (3) The statement shall be submitted within sixty days after the date of the winding-up order or within such extended time as the Court or the liquidator for good reason allows, and the liquidator shall within seven days after its receipt cause a copy of the statement to be lodged with the Registrar.
- (4) Any person making or concurring in making the statement required by this section may subject to the regulations be allowed and be paid by the liquidator, out of the assets of the corporation, such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable.
- (5) Every person who without reasonable excuse makes default in complying with the requirements of this section is guilty of an offence.

187 Settlement of list of contributories and application of assets

- (1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories and may rectify the register of members and, in the case of a corporation which issued bearer shares, enquire into and determine who are the members of the corporation in all cases where such rectification or enquiry is required for settling a correct list of contributories.
- (2) Notwithstanding the last preceding subsection, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of the contributories, it may dispense with the settlement of a list of contributories.
- (3) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the obligations of others.
- (4) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

188 Report of liquidator

- (1) The liquidator in a compulsory winding-up shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Minister:
 - (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
 - (b) if the corporation has failed, as to the causes of the failure; and
 - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion formation or failure of the corporation or the conduct of the business thereof.
- (2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the corporation was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the corporation since its formation and specifying any other matter which in his opinion it is desirable to bring to the notice of the Minister.

Division 3 — Voluntary winding-up

189 Circumstances in which trading corporation may be wound up voluntary

- (1) A trading corporation may be wound up voluntarily if the corporations so resolves by special resolution and the winding-up shall commence at the time when notice of the resolution for voluntary winding-up is lodged with the Registrar.
- (2) The resolution to wind up the corporation shall name and appoint the liquidator, who shall be an official liquidator, but in default the Registrar shall appoint as liquidator such official liquidator as he shall think fit.
- (3) A trading corporation shall:
 - (a) forthwith upon the passing of the resolution to wind up the corporation notify the liquidator named in the resolution and lodge a notice thereof with the Registrar; and
 - (b) within thirty days after the passing of a resolution for voluntary winding-up lodged a copy of the resolution with the Registrar and pay the prescribed fee; and

- (c) within thirty days after the passing of the resolution, give notice of the resolution in a newspaper prescribed by regulations made under this Act or directed by the Registrar.
- (4) If the corporation fails to comply with the provisions of subsection (3) of this section, it and every officer of it who is in default is guilty of an offence.

190 Circumstances in which holding corporation may be wound up voluntarily

- (1) A holding corporation may be wound up voluntarily if the holders of more than fifty per cent in number or par value of the issued shares, whether bearer shares or registered shares and whether held by the corporation itself or not, lodge with the Registrar in the prescribed manner notice of their desire that the corporation be wound up voluntarily.
- (2) Upon the Registrar being satisfied that the notice of the desire of the holders of more than fifty per cent in number or par value of the issued shares of the corporation has been lodged with him, he shall appoint under his hand an official liquidator to be liquidator of the corporation and thereupon the winding-up thereof shall commence.
- (3) In the case of a holding corporation, no advertisement of the winding-up shall be necessary but, without imposing any obligation on the liquidator or the Registrar so to do in any case, the liquidator or the Registrar may give such notices and make such enquiries as they see fit to ascertain the identity of the holders of the shares in the corporation and of the creditors, if any, thereof, and the costs and expenses of and incidental to so doing shall be paid out of the assets of the corporation.

191 Declaration of solvency

- (1) Where it is proposed to wind up a corporation voluntarily the directors of the corporation or, in the case of a corporation having more than two directors, the majority of the directors may, before the date on which the resolution for the winding-up of the corporation is passed or the notice under section 190 is lodged, make and lodge with the Registrar a written declaration to the effect that they have made an inquiry into the affairs of the corporation, and have formed the opinion that the corporation will be able to pay its debts in full within a period not exceeding twelve months after the date of the making of the declaration.

- (2) There shall be attached to the declaration a statement of affairs of the corporation showing in the prescribed form:
 - (a) the assets of the corporation and the total amount expected to be realised therefrom;
 - (b) the liabilities of the corporation; and
 - (c) the estimated expenses of winding-up, made up to the latest practicable date before the making of the declaration.
- (3) A declaration so made shall have no effect for the purposes of this Act unless it is:
 - (a) made within five weeks immediately preceding the passing of the resolution for voluntary winding-up; and
 - (b) lodged with the Registrar before the date on which the resolution for the winding-up of the corporation is passed.
- (4) A director who makes a declaration under this section without having reasonable grounds for the opinion that the corporation will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.
- (5) If the corporation is wound-up in pursuance of a resolution for voluntary winding-up passed within a period of five weeks after the making of the declaration but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

192 Conversion of voluntary winding-up to compulsory winding-up

Where a corporation is being wound up voluntarily:

- (a) if the liquidator is at any time of the opinion that the corporation will not be able to pay or provide for the payment of its debts in full or, if not in full, to the satisfaction of all the creditors, he shall forthwith give notice to the creditors of that opinion; and

- (b) upon such notice being given the winding-up shall continue as a compulsory winding-up and the liquidator shall forthwith lodge with the Court a notice to that effect in the prescribed form and thereupon the Court shall be deemed to have ordered the winding-up and to have appointed the liquidator.

193 Payment of claims by liquidator of holding corporation in voluntary liquidation

- (1) Within one hundred and twenty days after the commencement of the voluntary winding-up of a holding corporation, or within such further time as the Registrar may allow, the liquidator shall make such enquiries as to claims and give such notices by advertisement or otherwise as the regulations provide, or, until such regulations are made, as the liquidator thinks fit, and thereafter the liquidator, subject to the retention of a fund sufficient to meet the costs, charges and expenses and future costs, charges and expenses of the liquidation, shall pay such claims in the liquidation of which he has actual notice and which he has admitted or which are admissible and, without regard to other claims of which he has no notice or which are not admissible, shall distribute the surplus rateably amongst the contributories, in the case of those contributories whose identity is known to the liquidator by paying over to them their shares or otherwise accounting to them for their respective shares in the surplus and in the case of those contributories whose identities are not known to the liquidator by paying over to the unclaimed moneys fund to be established by the Republic for the purpose the shares of those contributories.
- (2) Upon making the payments referred to in the last preceding subsection, the liquidator shall lodge with the Registrar a certificate to that effect and the corporation shall be thereupon dissolved.
- (3) A claim by an unidentified contributory to recover his shares in the surplus paid into the unclaimed moneys fund shall become a claim against the Republic to be paid out of the said fund provided that such a claim is made within six years from the date of the liquidator's certificate and prosecuted with due diligence thereafter, and after the expiration of six years without any claim having been made, or, if made within that time, without any claim having been allowed, the amount standing in the unclaimed moneys fund in respect of the unidentified contributory shall be transferred to and become part of the Treasury Fund of the Republic.

- (4) The Minister may extend the time for making a claim upon the unclaimed moneys fund whether the time for making the claim has expired or not and whether or not the moneys in respect of which the claim has been made have been transferred to the Treasury Fund and, if any claim is allowed after the amount has been transferred to and become part of the Treasury Fund, it shall be paid out of, and be a charge upon, the Treasury Fund.
- (5) Regulations may be made for the establishment and administration of a fund to answer claims of creditors either not admitted by the liquidator or barred by the dissolution of a holding corporation prior to their submission to and allowance by the liquidator and prescribing the manner in which such claims may be made and determined and the amounts which may be claimed from such fund either in respect of a particular holding corporation or in respect of a particular claim and for enabling the recovery from contributories to whom payments of surplus have been made of the amount or amounts paid out of such fund and of costs, charges and expenses incurred in respect of the claim or claims made upon the fund:

Provided that such regulations shall not permit recovery from a contributory unless proceedings to enforce recovery are commenced within a period of nine years from the date of the liquidator's certificate.

Division 4 — Liquidators

194 Vacancy in office of liquidator

If in the course of a winding-up a vacancy occurs by death, resignation or otherwise in the office of a liquidator, in the case of a compulsory winding-up the Court shall fill the vacancy by the appointment of a liquidator, provided that the liquidator so appointed shall, unless the Court for special reasons otherwise orders, be an official liquidator, and in the case of a voluntary winding-up the vacant office shall be filled by the Registrar in like manner.

195 Replacement of liquidator

Subject to rules of court, the Court may remove a liquidator and appoint another liquidator in his place.

196 Validity of liquidator's acts

- (1) The acts of a liquidator shall be valid notwithstanding any defects that may be discovered in his appointment or qualification.
- (2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a corporation's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, be valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.
- (3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to such person.
- (4) For the purposes of this section a disposition of property shall be taken as including a payment of money.

197 General provisions as to liquidators

- (1) A person or corporation appointed to be the liquidator of a corporation may resign.
- (2) In the event of a corporation or contributory seeking the removal of a liquidator and such removal being opposed by the liquidator, the question shall be referred to the Court and upon cause being shown the Court may order that the said liquidator be removed and thereupon the said liquidator shall cease to be the liquidator of the corporation.
- (3) Upon discovery of any defect in the appointment or qualifications of a liquidator the Minister may by notice in the Gazette validate such appointment and the liquidator shall thereupon be deemed for all purposes to have been validly appointed on and from such date as may be specified in the notice.

198 Powers of liquidator

- (1) A liquidator may, subject to regulations made under this Act and, in a compulsory winding-up, subject to any order or rule of the Court:
- (a) carry on the business of the corporation so far as is necessary for the beneficial winding-up thereof;
 - (b) subject to the provisions of this Act, pay any class of creditors in full;
 - (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having, or alleging themselves to have, any claim present or future, certain or contingent, ascertained or sounding only in damages, against the corporation or whereby the corporation may be rendered liable;
 - (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the corporation and a contributory or other debtor or person apprehending liability to the corporation, and all questions in any way relating to or affecting the assets or the winding-up of the corporation, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof;
 - (e) bring or defend any action or other legal proceeding in the name and on behalf of the corporation;
 - (f) appoint a barrister and solicitor, a registered corporation agent, an accountant or some other expert to assist him in his duties;
 - (g) sell the real and personal property and things in action of the corporation by public auction, public tender or private contract with power to transfer the whole to any person or corporation or to sell the same in parcels;
 - (h) do all acts and execute in the name and on behalf of the corporation all deeds, receipts and other documents and for that purpose use when necessary the corporation's seal;

- (i) prove rank and claim in the insolvency, bankruptcy or liquidation of any contributory or debtor for any balance against his estate, and receive dividends in the insolvency, bankruptcy or liquidation in respect of that balance as a separate debt due from the insolvent, bankrupt or corporation in liquidation and rateably with the other separate creditors;
 - (j) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation with the same effect with respect to the liability of the corporation as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of its business;
 - (k) raise on the security of the assets of the corporation any money requisite;
 - (l) take out or cause to be taken out probate or letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the corporation, and in all such cases the money due shall for the purposes of enabling the liquidator to take out or cause to be taken out the probate or letters of administration or recover the money be deemed due to the liquidator himself;
 - (m) appoint an agent or expert to do any business or carry out any work or give any recommendation or advice which the liquidator is unable or unqualified to do himself and to pay the proper charges of such agents or experts for the doing of such work and to pay the proper expenses incurred in and incidental to the doing of such work; and
 - (n) do all such other things as are necessary or convenient and reasonable for winding-up the affairs of the corporation and distributing its assets.
- (2) If any creditor or contributory of the corporation contends that the liquidator should do or refrain from doing any of the acts or things hereinbefore mentioned or is aggrieved by any act or decision of the liquidator, such person may submit to the Registrar his contention in respect thereof, setting forth shortly the grounds therefor and if the Registrar is of opinion that the contention is one which might be reasonably sustained, whether the Registrar would himself sustain it or not, he shall so inform

the liquidator and the contention shall thereupon be referred to the Court and the liquidator shall act in accordance with the order of the Court, provided, however, that, unless the Court otherwise orders, the liquidator shall be entitled to his costs and expenses of the proceedings out of the assets of the corporation and, if prior to the contention being referred to the Court, the liquidator certifies to the Court that there is a doubt whether the assets of the corporation will be sufficient to satisfy such costs after providing for all other then known expenses and outgoings, the Court shall not then proceed with the hearing until full security for such costs and expenses has been provided by the applicant and such security shall, to the extent to which the liquidator is unable to satisfy such costs and expenses from the assets of the corporation, answer for the same and in any event shall answer for the same in the first instance; and the Court may order the applicant to pay to the corporation the whole of the liquidator's costs and expenses or such part thereof as it thinks fit, and may order the liquidator or the corporation to pay the whole of the applicant's costs or expenses or such part thereof as it thinks fit.

199 Exercise and control of liquidator's powers

- (1) Subject to the other provisions of this Act, the liquidator shall in the administration of the assets of the corporation and in the distribution thereof amongst its creditors have regard to any directions given by the creditors or contributories at any meeting or otherwise in accordance with this Act.
- (2) The liquidator may summon meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories and all such meetings shall be summoned and held in accordance with the regulations, if any, made in that behalf.
- (3) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the affairs and property of the corporation and the distribution of its assets.

200 Payment by liquidator into bank

- (1) Every liquidator shall pay the money received by him into the bank account opened by him for the purposes of his activities as liquidator and, in so far as any regulations provide, shall do so in

the manner and at the times and into the bank account so prescribed.

- (2) For the purposes of this section **'bank account'** means such an account with a corporation or foreign corporation lawfully carrying on business as a commercial and trading bank in Nauru or with any corporation or institution carrying on such business outside Nauru and approved for the purposes of this section by the Registrar.

201 Committees of inspection

Regulations may be made by the Cabinet relating to the appointment, constitution, powers, duties, remuneration and removal of committees of inspection and for the appointment, the removal and the substitution of the members thereof.

202 Sale of property by liquidator other than for cash

- (1) In any winding-up of any corporation the liquidator shall have power to sell, transfer or dispose of the business or property of the corporation in whole or in part in consideration of or in part consideration of the transfer, allotment or sale to him of shares, debentures, policies, choses in action or other like interests in other corporations or in another corporation for distribution amongst the members in the winding-up, without it being necessary for the liquidator to receive such number of such shares, debentures, policies, choses in action and the like as to permit of an exactly equal distribution amongst the members and the liquidator shall have power to transfer by way of distribution, some or all of such shares, debentures, policies, choses in action or the like to two or more members as tenants in common, and he may enter into any other arrangement whereby the members of the corporation may in lieu of receiving cash, shares, debentures, policies, choses in action or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from some other corporation or corporations, and any such transfer, sale, allotment or arrangement shall be binding on the members of the corporation:

Provided, however, that notice of the liquidator's intention in that behalf shall be given by him to such of the members of the corporation whose identities are known to him and, if within twenty-one days from the giving of such notice twenty-five per centum of those to whom notice has been given dissent from the course proposed, the liquidator shall either abstain from

carrying out the course proposed or purchase the interest of the dissentients at a price to be determined by agreement or by the Court.

- (2) In entering into any contract with another corporation or other corporations for the sale of the whole or part of the business or property of the corporation in return for the transfer, allotment or sale of shares, debentures, policies, choses in action, or other like interests or for any right to participate in profits of such other corporation or corporations or to receive any other benefit from such other corporation or corporations, the liquidator may make the dissent of the said twenty-five per centum of members as aforesaid a condition precedent or a condition subsequent to the contract and in the absence of the expression of such a condition or in event of it being doubtful whether such a condition is precedent or subsequent, there shall be imputed into the contract a condition precedent to the said effect.

203 Liquidator's books

Every liquidator shall keep proper books in which he shall cause to be made entries of minutes of proceedings at meetings and of resolutions by creditors or contributories and of such other matters as are prescribed and any creditor entitled to prove in the liquidation or any contributory may, with the approval of the Registrar, personally or by his agent inspect such books.

204 Liquidator's returns

Regulations may be made by the Cabinet prescribing what returns, accounts, reports and information shall be lodged with the Registrar by a liquidator and providing for the costs and fees of and incidental to the same to be paid or provided for.

205 Invoices, etc., of corporation in liquidation

- (1) Where a corporation is being wound-up, every invoice, order for goods or business letter issued by or on behalf of the corporation or a liquidator of the same or a receiver or manager of the property of the corporation, being a document on or in which the name of the corporation appears, shall have the words 'in liquidation' added after the name of the corporation where it first appears therein.

- (2) If default is made in complying with this section, the corporation and every officer and liquidator of the corporation and every receiver or manager who knowingly and wilfully authorises or permits the default is guilty of an offence.

206 Books of liquidator and corporation

- (1) Where a corporation is being wound up or has been wound up, all books and papers of the corporation and of the liquidator that are relevant to the affairs of the corporation at or subsequent to the commencement of the winding-up of the corporation shall as between the contributories of the corporation, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.
- (2) Where a corporation has been wound-up, the liquidator shall retain the books and papers until its dissolution and shall thereupon deliver them to or at the direction of the Registrar.
- (3) The Registrar may cause such books and papers to be destroyed after the expiration of six years from the commencement of the winding-up.
- (4) No responsibility shall rest on the liquidator or the Registrar by reason of any book or paper of the corporation being mislaid or not being forthcoming to a person claiming to be interested therein.

207 Investment by liquidator

Whenever the cash balance standing to the credit of any corporation in liquidation is in excess of the amount which in the opinion of the liquidator is required for the time being to answer the demands in respect of the corporation, the liquidator may invest the sum or any part thereof in securities issued by the Republic or upon loan to any finance corporation administered or controlled by or on behalf of the Republic or by lending the same at interest, with or without security, to any approved borrower specified in regulations made under this Act from time to time.

208 Liquidator's expenses

- (1) Unless expressly directed so to do by the Court, a liquidator shall not be liable to incur any expense in relation to the winding-up of a corporation unless there are sufficient available assets to meet such expense.

- (2) The Court may on the application of a creditor or contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and gives security to secure the amount of the indemnity in a form acceptable to the liquidator.

Division 5 – Dissolution

209 Dissolution

- (1) As soon as the affairs of the corporation are fully wound up, the liquidator shall, unless the winding-up is governed by section 193, prepare an account showing how the winding-up has been conducted and the property of the corporation has been disposed of, and shall, unless the Registrar otherwise orders, send a copy of the account to each member of the corporation of whose name and address he is aware and, where the creditors of the corporation have not been paid in full or had their debts compromised, also to each creditor of whose name and address he is aware and shall lodge with the Registrar and, in the case of a compulsory winding-up, file in the Court a copy of the account together with the statement of the date upon which it was despatched as aforesaid.
- (2) On the expiration of three months after the lodging of the return with the Registrar, the corporation shall be dissolved.
- (3) Notwithstanding the provisions of the last preceding subsection, the Registrar or, in the case of a compulsory winding-up, the Court may, on application by the liquidator, by any other person who appears to the Registrar or the Court, as the case may be, to be interested or, in the case of a compulsory winding-up, by the Registrar, make an order deferring the date at which the dissolution of the corporation is to take effect for such time as the Registrar or the Court, as the case may be, thinks fit but not exceeding twelve months and may, in special circumstances, extend the period upon further applications for further periods of not more than six months.
- (4) Except where the applicant is the Registrar, the person on whose application an extension is granted under the last preceding subsection shall, within fourteen days after the granting of the extension, lodge with the Registrar, a copy of the order of the Registrar or the Court, as the case may be, which shall set forth the name of the applicant and of the corporation and the date upon which the extension was granted and the

period for which it was granted and shall pay the prescribed fee therefor and, if the applicant is not the liquidator, shall send a copy thereof to the liquidator and in default thereof the extension shall cease and the corporation shall forthwith be dissolved upon the date upon which it would have been dissolved if the order had not been made.

- (5) Where an extension is granted upon the application of the Registrar, he shall forthwith note the order of the Court upon his records relating to the corporation and shall send a copy thereof to the liquidator.
- (6) Upon the dissolution of a corporation the liquidator shall, unless the Court upon the application of any interested person or of its own motion otherwise orders prior to the dissolution, be released from all claims by the contributories, the creditors and the corporation.

210 Accountability of liquidator

- (1) The Court may, if it sees fit, cause a report to be made on any accounts of the liquidator by a registered corporation auditor appointed by the Court for that purpose and pursuant to such report may issue a summons requiring the liquidator to appear before it and upon the hearing of such summons may make such order or give such directions as it thinks fit, including an order for the liquidator to make good any loss suffered by the corporation resulting from his wilful misconduct, wilful default or wilful neglect.
- (2) When the liquidator has realised all the property of the corporation or so much thereof as can in his opinion be realised without needlessly protracting the liquidation or incurring expense without sufficient warrant, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories amongst themselves and made a final return, if any, to the contributories, he may apply to the Court:
 - (a) for a declaration that he be released; or
 - (b) for a declaration that he be released and that the corporation be dissolved.
- (3) When the liquidator has resigned or been removed from his office he may apply to the Court for a declaration that he has been released.

- (4) Upon an application by a liquidator for a declaration that he be released, the Court may in granting the application impose such terms and conditions as it thinks fit.
- (5) The liability of an official liquidator shall be limited to liability for wilful misconduct, wilful default and wilful neglect.
- (6) Upon being released, the liquidator shall cease to hold office.
- (7) Where a liquidator is released under the provisions of this section, a copy of the declaration releasing the liquidator shall, within sixty days after the making thereof, be lodged by the liquidator with the Registrar.

Division 6 — Effect on other transactions

211 Avoidance of preference: invalidity of floating charge

- (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any corporation unable to pay its debts as they become due from its own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the corporation making, taking, paying or suffering the same is wound up on a petition presented, or in consequence of a special resolution passed under subsection (1) of section 189 or of a notice lodged under subsection (1) of section 190 of this Act, within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the liquidator of the corporation.
- (2) Subject to the provisions of the last preceding subsection, nothing in this Act shall invalidate, in the case a winding-up:
 - (a) any payment by the corporation to any of its creditors;
 - (b) any payment or delivery to the corporation;
 - (c) any conveyance or assignment by the corporation for valuable consideration;
 - (d) any contract, dealing or transaction by or with the corporation for valuable consideration:

Provided that both the following conditions are complied with, namely:

- (i) that the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the commencement of the winding-up; and
 - (ii) that the person, other than the corporation, to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of any act which if the corporation were a natural person would be an available act of bankruptcy or insolvency committed by the corporation before that time.
- (3) A floating charge on the undertaking or property of a corporation created within six months of the commencement of the winding-up shall, unless it is proved that the corporation immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the corporation at the time of, or subsequently to the creation of and in consideration for, the charge together with interest on that amount at the rate of five per centum per annum.

212 Sales other than at proper value

- (1) Where any property, business or undertaking has been acquired by a corporation for a cash consideration within a period of two years before the commencement of the winding-up of the corporation:
- (a) from a person who was at the time of the acquisition a director of the corporation; or
 - (b) from a corporation of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned corporation;

the liquidator may recover from the person or the corporation from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

- (2) Where any property, business or undertaking has been sold by a corporation for a cash consideration within a period of two years before the commencement of the winding-up of the corporation:
- (a) to a person who was at the time of the sale a director of the corporation; or
 - (b) to a corporation of which at the time of the sale a person was a director who was also a director of the corporation first mentioned in this subsection;

the liquidator may recover from the person or corporation to which the property, business or undertaking was sold any amount by which the value of the property business or undertaking at the time of the sale exceeded the cash consideration.

- (3) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar consideration.
- (4) In this section '**cash consideration**' means any consideration payable otherwise than by the issue of shares.

213 Disclaimer of onerous property

- (1) Where any part of the property of a corporation consists of:
- (a) any estate or interest in land which is burdened with onerous covenants;
 - (b) shares or stocks in corporations;
 - (c) unprofitable contracts; or
 - (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money;

the liquidator of the corporation, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relationship thereto, may, subject to this section, by writing signed by him, at any time within twelve months after the commencement of the winding-up disclaim the property and shall forthwith send a copy thereof to

every person affected thereby of whom he has actual notice; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power of disclaiming may be exercised at any time within twelve months after he has become aware thereof.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the corporation, and the property of the corporation, in or in respect of the property disclaimed, but shall not, except so far as it is necessary for the purpose of releasing the corporation and the property of the corporation from liability, affect the rights or liabilities of any other person.
- (3) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within the period of two months after the receipt of the application, given notice to the applicant that he intends to disclaim and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.
- (4) Any interested person aggrieved by any disclaimer by the liquidator under this section may, within sixty days of the signature of that disclaimer, apply to the Court to have the disclaimer set aside and, if the Court so orders, the disclaimer set aside and shall be void *ab initio*.
- (5) A party to a contract with the corporation, which contract has not been disclaimed by the liquidator, may, either with or without requiring the liquidator to elect whether he disclaims the contract, require the liquidator to state whether he intends to endeavour to perform the contract so far as the same remains to be performed on the part of the corporation and, in the event of the liquidator failing to state within two months after receipt of a notice by him requiring him so to do that he so intends, that party may, with the consent of all other parties, if any, other than the liquidator, without being liable in damages for rescission of the contract, rescind the contract and any amount recoverable by the corporation pursuant to such rescission may be thereupon recovered by the liquidator from the other party or parties and any amount recoverable from the corporation pursuant to such rescission may be proved for in the winding-up by such other party or parties, provided however that a liquidator shall not become personally liable for the performance of the contract by reason only that he states whether or not he

proposes to endeavour to perform it, unless he makes such statement fraudulently.

- (6) Upon application by any person interested in any property the subject of a disclaimer, the Court make an order vesting the property in the person entitled thereto subject to such terms and conditions, if any, as it thinks fit.

Division 7 — Offences

214 Offences by officers of corporations in liquidation

- (1) Every person who, being a past or present officer of a corporation which is being wound up:
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property real and personal of the corporation and how and to whom and for what consideration and when the corporation disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the corporation;
 - (b) does not deliver up to the liquidator or as he directs:
 - (i) all the real and personal property of the corporation in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the corporation and which he is required by law to deliver up;
 - (c) within the six years next before the commencement of the winding-up or at any time thereafter:
 - (i) has concealed any part of the property of the corporation to the value of fifty dollars or upwards, or has concealed any debt due to or from the corporation;
 - (ii) has fraudulently removed any part of the property of the corporation to the value of fifty dollars or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the corporation;

- (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the corporation;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to parting fraudulently with, altering or making any omission in, any document affecting or relating to the property or affairs of the corporation;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the corporation on credit which the corporation has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the corporation, under the false pretence that the corporation is carrying on its business or has a current certificate of incorporation, any property which the corporation has not subsequently paid for; or
 - (viii) has pawned, pledged or disposed of any property of the corporation which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the corporation;
- (d) wilfully makes any material omission in any statement relating to the affairs of the corporation;
 - (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
 - (f) prevents the production of any book or paper affecting or relating to the property or affairs of the corporation;
 - (g) within the six years next before the commencement of the winding-up or at any time thereafter has attempted to account for any part of the property of the corporation by making entries in the books of the corporation showing fictitious losses or expenses; or

- (h) within the six years next before the commencement of the winding-up or at any time thereafter has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the corporation or any of them to an agreement with reference to the affairs of the corporation or to the winding-up;

is guilty of an offence.

- (2) It shall be a good defence to a charge under paragraph (a), (b), (d) or subparagraphs (i), (vii) or (viii) of paragraph (c) of the last preceding subsection if the accused proves that he had no intent to defraud and to a charge under paragraph (f) or subparagraph (iii) or (iv) of paragraph (c) of that subsection if he proves that he had no intent to conceal the state of affairs of the corporation or to defeat the law.
- (3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (viii) of paragraph (c) of subsection (1) of this section every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence.
- (4) Any person who within Nauru offers any shares or debentures to the public or to any member of the public, not being a corporation, for subscription or purchase is guilty of an offence unless the Minister has given prior consent in writing to his doing so.
- (5) Every person who in any return, report, certificate, balance sheet or other document required by or for the purposes of this Act wilfully makes a statement false in any material particular knowing it to be false is guilty of an offence.

215 Frauds by officers

Every person who, while an officer of a corporation which is subsequently wound up:

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the corporation;
- (b) with intent to defraud creditors of the corporation 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 corporation; or

- (c) with intent to defraud creditors of the corporation has concealed or removed any part of the property of the corporation since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the corporation;

is guilty of an offence.

216 Liability where proper accounts not kept or debts incurred without reasonable expectation of payment

- (1) Where a corporation is wound up and it is shown that proper books of account were not kept by the corporation throughout the period of two years immediately preceding the commencement of the winding-up or the period between the incorporation of the corporation and the commencement of the winding-up whichever is the shorter, every officer who is in default is, unless he acted honestly and shows that in the circumstances in which the business of the corporation was carried on the default was excusable, guilty of an offence.
- (2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any trading corporation if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the trading corporation, including books containing entries from day to day in sufficient detail of all cash received and cash paid and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited.
- (3) An officer or former officer of any corporation which is being, or has been, wound up who was knowingly a party to the contracting of a debt provable in the winding-up and had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the corporation being able to pay the debt, is guilty of an offence.

217 Personal liability for debts

Any person who is knowingly a party to the carrying on of the business of a corporation with intent to defraud creditors shall be guilty of an offence and shall be personally liable for the debts of the corporation.

Division 8 — Defunct corporations

218 Defunct corporations

- (1) where the Registrar has reasonable cause to believe that a corporation, being a trading corporation, is not carrying on business or is not in operation or being a holding corporation is not in operation or, in the case of either kind of corporation, is not the holder of a current certificate of incorporation, he may send to the corporation by prepaid registered post addressed to the registered office of the corporation a letter to that effect and stating that if an answer showing cause to the contrary is not received within two months from the date thereof the Registrar will strike the name of the corporation off the register.
- (2) At the expiration of the time mentioned in the notice, or such further time as to the Registrar seems fit, he may, unless cause to the contrary is previously shown, strike the name of the corporation off the register and the corporation shall be thereupon dissolved; but:
 - (a) the liability, if any, of every officer and member of the corporation shall continue and may be enforced as if the corporation had not been dissolved; and
 - (b) nothing in this subsection shall affect the liability of the corporation to be wound up pursuant to the provisions of this Act.
- (3) Where such statutory return and documents as the Registrar may direct have been lodged and the prescribed costs and fees paid, upon application in the prescribed form the Registrar may, if he is satisfied that no person will be prejudiced and that due cause has been shown, restore to the register the name of a corporation which has been struck off but such restoration shall be made only upon payment of all costs, fees, charges and any arrears thereof to the Registrar and to all other persons who would have been entitled to receive them if the corporation had not been struck off.

- (4) Where costs, charges or fees or arrears, if any, thereof are paid under the last preceding subsection in respect of any corporation which is being wound-up, such costs, charges, fees and arrears shall be deemed to be costs of the liquidation.
- (5) Notwithstanding the provisions of subsections (1) and (2), where a corporation, or an officer of a corporation, notifies the Registrar in writing that the corporation does not intend to renew the certificate of incorporation of the corporation, the Registrar may, when the period of validity of the most recent certificate of incorporation has expired, forthwith strike the name of the corporation off the register without having given to the corporation any notice of his intention to do so; and the striking-off of the name of the corporation shall be deemed to have been done under subsection (2).

219 Registrar to act as representative of defunct corporation in certain events

- (1) Where after a corporation has been dissolved it is proved to the satisfaction of the Registrar:
 - (a) that the corporation, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
 - (b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the corporation, or should be done by or on behalf of the corporation if still existing;

the Registrar may as representing the corporation or its liquidator under the provisions of this section do or cause to be done any such act.

- (2) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the corporation if existing had duly executed such instrument or document.

220 Outstanding assets of defunct corporation to vest in Registrar

- (1) Where, after a corporation has been dissolved, there remains any outstanding property, real or personal, including things in action, and whether within or outside the Republic which was

vested in the corporation or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the corporation or its liquidator, such property except uncalled capital shall, for the purposes of the following subsections of this section and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the corporation or its liquidator at the date the corporation was dissolved, together with all claims, rights and remedies which the corporation or its liquidator then had in respect thereof.

- (2) The Registrar may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person who may have an interest in the same in such manner, for such consideration and upon such terms and conditions as he thinks fit with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.
- (3) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this section shall be applied first in defraying all costs, expenses, fees and commissions incidental thereto and thereafter shall be paid into the Treasury Fund.
- (4) Any action for or in respect of any moneys paid into the Treasury Fund under the provisions of this section shall be against the Registrar as the nominal defendant and shall be instituted within six years next after the dissolution of the corporation after which time no such action shall be instituted and the claim shall be absolutely barred.

Division 9 — Winding-up of unregistered corporations

221 Unregistered corporations

For the purposes of this Division '*unregistered corporation*' includes:

- (a) a foreign corporation or company;
- (b) any partnership or association consisting of more than five members; and

- (c) with effect from the expiration of a period of one year from the commencement of this Act, a company incorporated under the *Companies Ordinance 1912* which has failed to register under this Act;

but does not include a corporation incorporated or registered under this Act or created by any statute of the Republic except the *Companies Ordinance 1912* or a foreign corporation or company registered under this Act.

222 Winding-up of unregistered corporations

- (1) Subject to this Division, any unregistered corporation may be wound up in any circumstances in which a corporation may be wound up and also if it is being wound up or has been wound up or dissolved or has otherwise ceased to exist in any other place in which it has, or had, a residence or carries, or carried, on business or is incorporated or if it is dissolved or has ceased to have a place of business in Nauru or has a place of business in Nauru only for the purpose of winding up its affairs, or the circumstances are such that, if it were a corporation incorporated under this Act, the Registrar would be entitled to give notice requiring cause to be shown why its name should not be struck from the Register of Corporations.
- (2) No unregistered corporation shall be wound up voluntarily.
- (3) The provisions of this Act relating to the winding-up of corporations, and the provisions of any regulations relating thereto, shall *mutatis mutandis* apply to the winding-up of an unregistered corporation.
- (4) A corporation incorporated outside Nauru may be wound up as an unregistered corporation notwithstanding that it is being wound up or has been wound up or dissolved or has otherwise ceased to exist as a corporation under or by virtue of the laws of the place where it was incorporated any other place in which it has a residence.

223 Contributories in winding-up

- (1) On an unregistered corporation being wound up every person shall be a contributory:
 - (a) who is liable to pay or contribute to the payment of:
 - (i) any debt or liability of the corporation;

- (ii) any sum for the adjustment of the rights of the members among themselves; or
 - (iii) the costs and expenses of the winding-up; or
- (b) where the corporation has been dissolved in the place in which it is formed or incorporated who immediately before the dissolution was so liable;

and every contributory shall be liable to contribute to the assets of the corporation all sums due from him in respect of any such liability.

- (2) On the death, bankruptcy or insolvency of any contributory the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt or insolvent contributories respectively shall apply.

PART X — FOREIGN CORPORATIONS

224 Interpretation

- (1) This Part applies to a foreign corporation only if it has a place of business or is carrying on business within Nauru.
- (2) **'Carrying on business'** includes:
- (a) establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situate in Nauru as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; and
 - (b) in the case of a foreign corporation in respect of which the Minister has by notice in the Gazette so specified, suffering or permitting the corporation's own shares to be dealt with, issued, transferred or made the subject of options or agreements within Nauru or permitting or suffering dealings, transfers or agreements to sell or purchase or options therefor in respect of securities, notes or rights issued by it to the public, or by reason of which the public might acquire an interest in the corporation, to be made within Nauru;

and **'to carry on business'** has a corresponding meaning.

- (3) Notwithstanding subsection (2) of this section, a foreign corporation shall not be regarded as carrying on business within Nauru by reason only of the fact that within Nauru it:
 - (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action suit or proceeding or of any claim or dispute;
 - (b) conducts one isolated transaction that is completed within a period of thirty-one days, not being one of a number of similar transactions repeated more than once.
- (4) A foreign corporation shall not have a place of business in Nauru or carry on business in Nauru for longer than one month unless it is registered as a foreign corporation under this Part and a foreign corporation and every officer thereof which acts or who permits the foreign corporation to act in contravention of this subsection is guilty of an offence.
- (5) A foreign corporation contravening subsection (4) hereof shall be liable to be wound-up under this Act as an unregistered corporation.
- (6) A foreign corporation shall not carry on in Nauru any business which a corporation incorporated under this Act may not carry on.
- (7) The Minister may by notice in the Gazette order that any foreign corporation be restricted from carrying on any specified business within Nauru and may by notice in the Gazette impose conditions subject to which any specified business may be carried on by a foreign corporation within Nauru.

225 Documents, etc., to be lodged by foreign corporations

- (1) Every foreign corporation shall, within one month after it establishes a place of business or commences to carry on business within Nauru, lodge with the Registrar for filing:
 - (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
 - (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

- (c) a list of its directors and officers containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors and secretaries of a corporation incorporated under this Act;
- (d) where a list includes directors resident in Nauru who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign corporation stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of a foreign corporation or executed on its behalf in such manner as to be binding on the corporation and, in either case, verified in the prescribed manner, stating the name and address of a registered corporation agent in Nauru authorised to accept on its behalf service of process and any notices required to be served on the corporation together with the written consent of such agent to the appointment;
- (f) notice of the situation of its registered office in Nauru; and
- (g) a declaration in the prescribed form setting out particulars of its authorised capital;

and the Registrar shall register the corporation under this Part by filing the documents.

- (2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of paragraph (e) of the last preceding subsection is executed by a person on behalf of the corporation, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.
- (3) Every foreign corporation shall have a registered office in Nauru and the name of the corporation shall be displayed outside the place where the registered office is situate and such office shall be open to the public for at least two hours each day between the hours of 8 a.m. and 5 p.m. Monday to Friday except upon a day which is a public holiday in Nauru.
- (4) A foreign corporation or its agent appointed pursuant to the provisions of paragraph (e) of subsection (1) of this section may lodge with the Registrar a notice in writing stating that the agent

has ceased to be the agent or will cease to be the agent on the date specified in the notice.

- (5) An agent in respect of whom a notice has been lodged under the last preceding subsection shall cease to be an agent on the expiration of a period of twenty-one days after the date of lodgement of the notice or on the date of the appointment of another agent a memorandum of whose appointment has been lodged in accordance with subsection (6) of this section, whichever is the earlier, but, if the notice states a date on which he is to cease and the date is later than the expiration of that period, on that date.
- (6) Where an agent ceases to be an agent and the corporation is then without an agent in Nauru if the corporation continues to carry on business or has a place of business in Nauru it shall within twenty-one days after the agent ceases to be such, appoint another registered corporation agent as its agent and lodge a memorandum of his appointment and the written consent of that agent in accordance with subsection (1) of this section, and, if not already lodged in pursuance of subsection (2) of this section, a copy of the deed or document or power of attorney referred to in that subsection verified in accordance with that subsection.
- (7) On the registration of a foreign corporation under this Part or the lodging with the Registrar of particulars of a change or alteration in a manner referred to in paragraph (c), (d) or (f) of subsection (1) of section 226, and on payment of the prescribed fee, the Registrar shall issue a certificate in the prescribed form under his hand and seal which certificate shall be *prima facie* evidence in all Courts of the particulars mentioned in the certificate and shall be valid for a period of twelve months from the date of issue and shall on payment of the prescribed fee therefor be renewable from time to time for further periods of twelve months and the provisions of subsections (4), (5) and (6) of section 15 shall apply *mutatis mutandis*.

226 Return to be lodged where documents, etc., altered

- (1) Where any change or alteration is made in:
 - (a) the charter, statute, memorandum or articles of the foreign corporation or other instrument lodged with the Registrar;
 - (b) the directors of the foreign corporation;

- (c) the agent or agents of the foreign corporation or the address of any agent;
- (d) the situation of the registered office of the foreign corporation in Nauru;
- (e) the address of the registered office of the foreign corporation in its place of incorporation or origin;
- (f) the name of the foreign corporation; or
- (g) the powers of any directors resident in the Republic who are members of the local board of directors of the foreign corporation;

the foreign corporation shall within one month after the change or alteration lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

- (2) If a foreign corporation increases its authorised share capital it shall, within one month after such increase, lodge with the Registrar notice of the amount from which and of the amount to which it has been so increased.
- (3) If a foreign corporation not having a share capital increases the number of its members beyond the registered number it shall, within one month after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

227 Service on foreign corporations

Subject to any law relating to the service of process in criminal causes, any document required to be served on a foreign corporation shall be sufficiently served:

- (a) if addressed to the foreign corporation and left at or sent by post to its registered office in Nauru; or
- (b) if addressed to an agent of the corporation and left at or sent by post to his registered address in Nauru.

228 Cesser of business in Nauru

If a foreign corporation ceases to have a place of business or to carry on business in Nauru it shall within seven days after so ceasing lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document, not being a document that ought to have been

lodged before that day, with the Registrar shall cease, and the Registrar shall forthwith remove the name of that foreign corporation from the register.

229 Foreign liquidation

- (1) If a foreign corporation goes into liquidation or is dissolved in its place of incorporation or origin:
 - (a) the corporation or, where the corporation has been dissolved, the person in whom the assets of the corporation vest by virtue of the law of that place pursuant to the liquidation or dissolution shall, within one month after the commencement of the liquidation or dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and
 - (b) the Registrar shall forthwith appoint a liquidator for Nauru and, until the winding-up of its affairs in Nauru is completed, the foreign corporation shall be deemed to continue to exist in Nauru; and
 - (c) the Court shall be deemed to have ordered that it be wound-up.
- (2) The liquidator for Nauru so appointed shall get in all the assets of the foreign corporation situate in or recoverable in Nauru and shall, in so doing, have all the powers of a liquidator of a corporation incorporated in Nauru.
- (3) Before paying, or transferring, to the foreign liquidator any of the assets got in within Nauru the liquidator shall:
 - (a) pay to the Republic or the Registrar all penalties, costs, fees and charges due and owing; and
 - (b) pay to any person resident in Nauru to whom at the time of the appointment of the liquidator in Nauru any debt was due, incurred *bona fide* by the foreign corporation in respect of the supply of services to or for the foreign corporation, the amount of such debt:

Provided that the liquidator shall not pay to any person a sum exceeding five hundred Australian dollars under the provisions of this paragraph;

and it is hereby enacted that such penalties, costs, fees, charges and debts payable by the liquidator under the provisions of this subsection are a charge upon the assets of the foreign corporation ranking after the costs of the liquidator appointed by the Register but in priority to all other charges and claims whatsoever.

- (4) The provisions of this Act relating to the striking-off from the register of the names of trading corporations shall, with such adaptations as are necessary, extend and apply to foreign corporations.

230 Names of foreign corporations

- (1) The restrictions upon the registration of names of corporations shall *mutatis mutandis* apply to the registration of foreign corporations.
- (2) If a foreign corporation is registered, either in error or otherwise, with a name with which it should not have been registered, the Registrar may, upon one month's notice to the foreign corporation requiring it to change its name, strike the corporation from the register upon default in its so doing.
- (3) No foreign corporation shall use in Nauru or elsewhere by reference to acts done or to be done in Nauru, any name other than that under which it is registered under this Part and every foreign corporation and every officer of the corporation who knowingly authorises or permits the default is guilty of an offence.

231 Returns by foreign corporations

Regulations may be made prescribing the registers and returns to be kept and made by foreign corporations and fixing the times within which the same must be kept and made and the fees and charges payable therefor.

PART XI — MISCELLANEOUS

232 Service of documents on corporations

Subject to any written law relating to the service of process in criminal cases, any document may be served on a corporation by leaving it at or sending it by post to the registered office of the corporation.

232A Continuation outside Nauru of corporation incorporated under this Act

- (1) A corporation incorporated under this Act may, upon obtaining the approval of the Minister and within two months from the date on which that approval is obtained apply to the proper officer of a country other than Nauru, or of a jurisdiction within such a country, by the laws of which such continuation is authorised for an instrument of continuation continuing the corporation as if it had been incorporated under the laws of that other country or jurisdiction; and on and after the date of the instrument of continuation the corporation shall become a corporation under the laws of that country or jurisdiction and be domiciled therein.
- (2) A corporation shall not apply to the Minister for approval under the preceding subsection unless:
 - (a) such application is authorised by:
 - (i) where any shares of the corporation are in existence, holders of not less than the three-quarters of such shares of each class; and
 - (ii) the holders of not less than three-quarters of the corporation's debentures, if any, of each class;
 - (b) the corporation, not less than 28 days before applying to the Minister for such approval, has published in the Gazette a notice of its intention to make the application; and
 - (c) it lodges with the Minister an affidavit sworn by a director of the corporation in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.
- (3) The Minister shall not give his approval to a corporation applying for its continuation in another country or jurisdiction unless he is satisfied that:
 - (a) the requirements of the last preceding subsection have been complied with;
 - (b) the intended transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the corporation's members, debenture-holders or creditors; and

- (c) the corporation has not failed to comply with any provision of this Act with which it should have complied,

and may make, his approval conditional upon such provision as he thinks necessary being made by the corporation to safeguard the rights and proper interests of any member, debenture-holder or creditor of the corporation or any class of such members, debenture-holders or creditors or upon the corporation taking such steps as he considers necessary to remedy any failure to comply with any provision of this Act.

- (4) Upon an instrument of continuation continuing the corporation in another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the corporation shall forthwith notify the Registrar of the details and the corporation shall be deemed to have ceased to be a corporation incorporated in Nauru from the date when its continuation in that other country or jurisdiction takes effect, and the Registrar shall remove its name from his register:

Provided that nothing in this subsection shall:

- (a) prevent such a corporation from being registered in Nauru is a foreign corporation at any time after it has ceased to be a corporation incorporated in Nauru; or
 - (b) take away or affect the jurisdiction of any Court in Nauru to hear and determine any proceedings commenced therein by or against the corporation before it ceased to be a corporation incorporated in Nauru.
- (5) Where a corporation notifies the Registrar under the last preceding subsection that an instrument of continuation continuing the corporation in another country or jurisdiction has been executed by the proper officer of the other country or jurisdiction and that notification is false, then, notwithstanding that the Registrar has removed the name of the corporation from the register in pursuance of the provisions of that subsection:
 - (a) the liability, if any, of every officer and member of the corporation shall continue and may be enforced as if the corporation were still registered under this Act; and
 - (b) the corporation shall be liable to be wound up pursuant to the provisions of this Act as if it were still registered under this Act.

- (6) For the purposes of this section:
- (a) a person who has, in Nauru or elsewhere, commenced proceedings against a corporation, other than proceedings to recover a debt alleged to be owed by the corporation to the taxation or revenue authority of any country or jurisdiction, or has counterclaimed against a corporation in proceedings commenced by the corporation, shall be deemed to be a creditor of the corporation;
 - (b) no person shall be deemed to be a creditor of a corporation in respect of any debt owed, or alleged to be owed, to the taxation or revenue authority of any country or jurisdiction.

233 Costs before Registrar

In respect of any proceedings before the Registrar under the provisions of this Act he may at his own discretion direct that the costs of one party be paid in such amount and by such other party as he thinks just.

234 Security for costs

Where a corporation or a foreign corporation is a plaintiff in any action or other legal proceedings the Court having jurisdiction in the proceedings, or a judge or magistrate thereof, may, if it appears by creditable testimony that there is reason to believe that the corporation or foreign corporation will be unable to pay the costs of the defendant if he is successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

235 Disposal of shares of shareholder whose whereabouts are unknown

- (1) Where by the exercise of reasonable diligence a corporation is unable to discover the whereabouts of a registered shareholder for a period of not less than ten years the corporation may cause an advertisement to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the corporation after the expiration of one month from the date of the advertisement intends to transfer the shares to the Registrar.

- (2) If after the expiration of one month from the date of the advertisement the whereabouts of the shareholder remain unknown, the corporation may transfer the shares held by the shareholder in the corporation to the Registrar and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Registrar.
- (3) The Registrar shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale as if they were moneys paid to him pursuant to the provisions of this Act relating to unclaimed moneys.

236 Power to grant relief

- (1) In any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, if it appears to the Court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.
- (2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against him for the negligence, default, breach of duty or breach of trust had been brought.
- (3) The persons to whom this section applies are:
 - (a) officers of a corporation;
 - (b) persons employed by a corporation as auditors, whether they are or are not officers of the corporation;
 - (c) experts within the meaning of this Act; and
 - (d) any persons who are receivers, receivers and managers or liquidators appointed or directed by the Court or the Registrar to carry out any duty under this Act in relation to a corporation and all other persons so appointed or so directed.

237 Irregularities in proceedings

- (1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court or Registrar is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court or the Registrar.

The Court or the Registrar may, if it or he thinks fit, make an order declaring that such proceeding is valid notwithstanding any such irregularity or deficiency.

- (2) Without affecting the generality of the last preceding subsection or of any other provision of this Act, where any omission, defect, error or irregularity, including the absence of a quorum at any meeting, has occurred in the management or administration of a corporation whereby any breach of any of the provisions of this Act has occurred, or whereby there has been default in the observance of the memorandum or articles of the corporation or whereby any proceedings at or in connection with any meeting or purported meeting have been rendered ineffective, including the failure to make or lodge any declaration of solvency pursuant to section 191, the Court or the Registrar:

- (a) may, either of its or his own motion or on an application lodged by any interested person, make such order as it or he thinks fit to rectify or cause to be rectified or to negative or modify or cause to be negated or modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered invalid by or as a result of any such omission, defect, error or irregularity;
- (b) shall before making any such order satisfy itself or himself that such an order would not do injustice to the corporation or to any member or creditor thereof;
- (c) where any such order is made, may give such ancillary or consequential directions as it or he thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

For the purpose of this subsection, '**meeting**' includes:

- (i) a meeting of the corporation;

- (ii) a meeting of any class of members of the corporation;
 - (iii) a meeting of the debenture holders or any class of debenture holders of the corporation;
 - (iv) a meeting of the directors of the corporation or of any committee of the directors; and
 - (v) a meeting of the creditors or any class of the creditors of the corporation.
- (3) The Court or the Registrar, whether the corporation is in process of being wound up or not, may enlarge or abridge any time for doing any act or taking any proceedings allowed or limited by this Act or any regulations hereunder upon such terms, if any, as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

238 Translation of instruments

- (1) Where under this Act the corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language the corporation shall lodge at the same time with the Registrar a certified translation thereof.
- (2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language the corporation shall keep at its registered office in Nauru a certified translation thereof.
- (3) For the purpose of this section a **'certified translation'** means a translation into the English language certified as a correct translation by the translator and bearing a certificate in the English language by a diplomatic or consular officer of the Republic or of the Commonwealth of Australia, of New Zealand or of the United Kingdom or by a person before whom by any law of the Republic affidavits may lawfully be sworn for use in proceedings in any Court of the Republic.

239 Dividends payable from profits only

No dividend shall be payable to any shareholder of any corporation except out of profits, including capital profits, or in pursuance of section 60 of this Act.

240 Use of word 'Corporation', etc.

Any person who carries on business under any name or title of which 'corporation' or 'incorporated' or any abbreviations thereof is the final word is, unless it is a corporation or foreign corporation duly created, incorporated or registered under this Act or any other written law, guilty of an offence.

241 General penalty provisions

- (1) Any person who:
- (a) does that which by or under this Act he is forbidden to do;
 - (b) does not do that which by or under this Act that he is required or directed to do; or
 - (c) otherwise contravenes or fails to comply with any provision of this Act;

is guilty of an offence and, save as hereinafter in this section provided, is liable on conviction to a fine of one hundred dollars.

- (2) Any person who is guilty of an offence against the provisions, or any part of the provisions, of any one sections 6, 42, 63, 95, 119, 134, 147, 148 and 214 of this Act is liable on conviction to a fine of five hundred dollars and to imprisonment for six months in respect of each such offence.
- (3) Any person who is guilty of an offence against the provisions, or any part of the provisions, of any one of sections 33, 40, 107, 215 and 216 of this Act is liable on conviction to a fine of one thousand dollars and to imprisonment for twelve months in respect of each such offence.

242 Procedure where none laid down

In the event that any act or step is required or permitted to be done under this Act and no form is prescribed or procedure laid down in this Act or the regulations for doing the same, application may be made to the Registrar for directions as to the manner in which the same may be done and any act or step done or taken in accordance with his directions shall be a valid performance of such act or step.

243 Regulations

- (1) Regulations may be made by the Cabinet prescribing all matters and things required or authorised by this Act to be prescribed or provided or which are necessary or convenient to be prescribed or provided for carrying out or giving effect to this Act and in particular for prescribing penalties for breaches of the regulations.
- (2) Regulations may be made by the Cabinet fixing and prescribing the fees to be paid under this Act and may be made delegating the power of fixing such fees to prescribed persons or bodies; such regulations may also provide for the rebate or refund of a portion of the fees payable or paid by corporations which are Nauruan corporations.

244 Rules of court

The Chief Justice may make rules of court concerning the mode of proceedings to be had for winding-up a corporation or foreign corporation in the Court and for giving effect to the other provisions of this Act by which jurisdiction is conferred on the Supreme Court or the District Court.

245 Appeals

- (1) An appeal shall lie to the Supreme Court in respect of any decision, order or approval made, given or refused by the Registrar in exercise of his powers under any one or more of the sections, subsections, paragraphs and sub-paragraphs of this Act specified hereunder:
 - (a) subsection (1) of section 21;
 - (b) section 34;
 - (c) section 35;
 - (d) subsection (1) of section 63;
 - (e) paragraph (b) of subsection (2) of section 63;
 - (f) sub-paragraph (ii) of paragraph (c) of subsection (2) of section 63;
 - (g) subsection (3) of section 63;
 - (h) section 64;

- (i) section 75;
 - (j) section 97;
 - (k) section 103;
 - (l) section 147;
 - (m) section 149;
 - (n) section 157;
 - (o) section 198;
 - (p) section 218;
 - (q) section 237.
- (2) Pending the determination of an appeal brought under the provisions of the last preceding subsection, no step shall be taken consequentially upon such decision, order, approval or refusal unless the Supreme Court or a judge or, if no judge is present in Nauru, the Registrar of the Supreme Court otherwise orders.
- (3) An appeal shall lie to the Supreme Court in respect of any order of the District Court made in exercise of its jurisdiction and powers under the provisions of any one or more of the sections and subsection of this Act specified hereunder:
- (a) section 147;
 - (b) section 149;
 - (c) section 163;
 - (d) section 167;
 - (e) section 168;
 - (f) section 169;
 - (g) section 179;
 - (h) subsection (6) of section 213;
 - (i) section 237.

- (4) Save with the leave of a judge, a petition of appeal shall not be filed more than twenty-one days after the date of the decision, order, approval or refusal of the Registrar or the order of the Court, as the case may be, to which the petition relates.

246 Power of exemption

- (1) The Minister may of his own motion or pursuant to an application in writing lodged with the Registrar by any corporation, or foreign corporation duly incorporated or registered under the provisions of this Act, by any other foreign corporation or by any unregistered or unincorporated body exempt such corporation or body from all or any part of the provisions of this Act and may impose such terms and conditions as he thinks fit as a condition under which such exemption is granted; an exemption granted under this subsection may be revoked by the Minister at any time for good cause.
- (2) In dealing with an application under this section the Minister shall not be required to act judicially and his decision shall in all cases be final.

247 Prohibitions by Cabinet

- (1) The Cabinet shall have an absolute right of its own motion or otherwise and without assigning reasons to make an order:
- (a) prohibiting the initial incorporation of any corporation or class of corporations;
 - (b) prohibiting the initial registration of a foreign corporation; and
 - (c) for any corporation or foreign corporation to cease to carry on its business or part of its business either immediately or within such time as may be specified in the order.
- (2) An order made under this section may be revoked or varied by the Cabinet.
- (3) In making an order under this section the Cabinet shall not be required to act judicially and such order shall be final.

248 No action to lie against Republic, President, Minister, judge or public officer

No action shall lie against the Republic, the President, any Minister, any judge or any public officer in respect of anything done or omitted in exercise or purported exercise by the Cabinet, the President, any Minister, any judge or any public officer of its or his functions or duties under this Act.

249 *[Repealed]*

250 Certain provisions of applied statutes not to apply to the Authority etc.

- (1) The provisions of the two applied statutes specified in subsection (4) of this section shall not apply to the Authority or its servants or agents as such or to any person acting on behalf of the Authority.
- (2) The provisions of the two applied statutes specified in subsection (4) of this section, other than those contained in section 13 of the *Prevention of Fraud (Investment) Act 1958* and section 1 of the *Protection of Depositors Act 1963*, shall not apply to registered corporation agents, registered directors or resident secretaries as such or to any officer, servant or agent, as such, of, or any person acting on behalf of, any registered corporation agent, registered director or resident secretary in its business as such.
- (3) The provisions of the *Prevention of Fraud (Investment) Act 1958* in its application to Nauru, other than the provisions contained in section 13 thereof, shall not apply to corporations incorporated under this Act or to any officer, servant or agent, as such, of, or any person acting on behalf of, any such corporation.
- (4) The applied statutes referred to in subsections (1) and (2) hereof are the *Prevention of Fraud (Investment) Act 1958* and the *Protection of Depositors Act 1963*, both Acts of England, in their application to Nauru.

250A Application of rule against perpetuities in certain cases

Notwithstanding the provisions of section 3 of the *Foreign Trusts, Estates and Wills Act 1972*, the rule of law known as the Rule against Perpetuities shall apply to any contract, deed, settlement or limitation to which a corporation is a party if it is in such contract, deed, settlement or limitation expressed to apply

thereto and for that purpose and to that extent only it shall be deemed to be a rule of law in force in Nauru.

PART XII — REPEAL

251 ***Companies Ordinance 1912* of Territory of Papua to cease to be applied**

Save in so far as it is continued in force by, and for the purposes of, section 3 of this Act, the *Companies Ordinance 1912* of the Territory of Papua shall forthwith cease to be in force or to have effect in Nauru and the Third Schedule of the *Laws Repeal and Adopting Ordinance 1922-1967* is hereby amended by deleting the said Ordinance therefrom.

SCHEDULES

FIRST SCHEDULE

Section 17

THE POWERS OF A CORPORATION

- 1 To carry on any business, other than a business which it is prohibited by the Act or the regulations from carrying on, which may seem to the corporation capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the corporation's property or rights.
- 2 To enter into or be a party to any transaction or document.
- 3 To acquire, hold, dispose of or deal with any information or rights or property of any kind.
- 4 To acquire, hold, dispose of or deal with the whole or any part of the undertaking of any other corporation, association or business.
- 5 To dispose of or otherwise deal with the whole or any part of its undertaking or business.
- 6 To assume any duties, obligations or liabilities.
- 7 To acquire any rights or interests.
- 8 To provide or procure provision of any services.
- 9 To lend and borrow.
- 10 To procure its registration or recognition in any place outside the Republic.
- 11 To create and extinguish liabilities and rights and interests.
- 12 To issue shares, debentures and options, and to take shares, debentures and options and to redeem and forfeit the same.
- 13 To employ or retain persons in and about its business or the business of any other corporation or person.

- 14 To give indemnities and guarantees and obtain indemnities and guarantees.
- 15 To take out insurances of all kinds whether over the property or rights of the corporation or not.
- 16 To promote any other corporation or company.
- 17 If it be a trading corporation, to make gifts or donations which may lawfully be made for the purpose of advancing its business.
- 18 If it be a holding corporation, to make gifts, donations and wagers which may lawfully be made whether the same may, or may not, be for the purpose of advancing its business.
- 19 If it be a holding corporation, by way of settlement or other dealing or disposition to give the right to a person not a member of the corporation to share in the whole or any part of its gains or profits to the exclusion of its members provided that in exercising such power no distribution of gains or profits shall be made pursuant to such settlement disposition or other dealing which would exceed the amount properly distributable as a dividend or properly capable of being returned as capital surplus were such distribution a distribution to some or to all of the members of the corporation.
- 20 To do any of the things which it may do in association with any other person or corporation and as principal or agent or as trustee or for its own benefit.
- 21 To promote any other business.
- 22 To do all such other things as are incidental or conducive to the exercise of the other powers of the corporation.
- 23 To do all other things which are not prohibited by or under the Act or the regulations made thereunder or otherwise by the laws of the Republic.

SECOND SCHEDULE – TABLE A

ARTICLES FOR MANAGEMENT OF A TRADING CORPORATION

Section 23

Interpretation

- 1 In these Articles words and expressions, unless the context otherwise requires or a contrary intention appears, have the same meanings as in the *Corporation Act 1971* and further:

'the office' means the registered office of the corporation;

'the Act' means the *Corporation Act 1971*;

'the seal' means the corporate seal of the corporation;

'secretary' means any person appointed to perform the duties of a secretary of the corporation.

Issue of shares

- 2 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares in the corporation may be issued by the directors and any such shares may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any ordinary resolution of the corporation, determine.

Bearer shares

- 3 No bearer shares in the corporation shall be issued.

Redeemable shares

- 4 Subject to the Act, any shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the corporation are liable, to be redeemed but such shares shall when issued be classified as redeemable shares

and shall be referred to as such in any certificate relating to such shares and in the register of members.

Share capital and variation of rights

- 5 If at any time the share capital is divided into different classes of shares, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may, whether or not the corporation is being wound up, be varied by special resolution of the corporation with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Articles relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and so that any holder of shares of the class present in person or by proxy may demand a poll.
- 6 The rights conferred upon the holders of shares of any class issued with preferred or other special rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith or in priority thereto.
- 7 The corporation may exercise the powers of paying commissions of the kinds referred to in section 58 of the Act, provided that the rate per cent, or the amount of the commission paid or agreed to be paid, shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of ten per cent. of the price at which the shares in respect whereof the same is paid are issued or an amount equal to ten per cent. of that price, as the case may be. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The corporation may also on the issue of shares pay such brokerage as may be lawful.
- 8 Except as required by law, no person shall be recognised by the corporation as holding any share upon any trust, and the corporation shall not be bound by or be compelled in any way to recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or unit of a share or, except only as by these Articles or by law otherwise provided, any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

- 9 Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the corporation in accordance with the Act but in respect of a share or shares held jointly by several persons the corporation shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

Lien

- 10 The corporation shall have a first and paramount lien on every share, not being a fully paid share, for all money, whether presently payable or not, called or payable at a fixed time in respect of that share, and the corporation shall also have a first and paramount lien on all shares, other than fully paid shares, registered in the name of a single person for all money presently payable by him or his estate to the corporation; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The corporation's lien, if any, on a share shall extend to all dividends payable thereon.
- 11 The corporation may sell, in such manner as the directors think fit, any shares on which the corporation has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.
- 12 To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- 13 The proceeds of the sale shall be received by the corporation and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on shares

- 14 The directors may from time to time make calls upon the members in respect of any money unpaid on their shares, whether on account of the nominal value of the shares or by way of premium, and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall, subject to receiving at least twenty-eight days' notice specifying the time or times and place of payment, pay to the corporation at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.
- 15 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call has passed and may be required to be paid by instalments.
- 16 The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 17 If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding eight per cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.
- 18 Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these Articles be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these Articles as to payment of interest and expenses, forfeiture, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
- 19 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.
- 20 The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all

or any part of the money so advanced may, until the same would, but for the advance, become payable, pay interest at such rate not exceeding, unless the corporation in general meeting shall otherwise direct, eight per cent per annum as may be agreed upon between the directors and the member paying the sum in advance.

Transfer of shares

- 21 Subject to these Articles any member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form the directors may approve. The instrument shall be executed by or on behalf of both the transferor and the transferee; and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.
- 22 The instrument of transfer must be left for registration at the office of the corporation together with such fee not exceeding \$2.00 as the directors from time to time may require accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and thereupon the corporation shall subject to the powers vested in the directors by these Articles register the transferee as a shareholder and retain the instrument of transfer.
- 23 The directors may decline to register any transfer of shares not being fully paid shares to a person of whom they do not approve and may also decline to register any transfer of shares on which the corporation has a lien.
- 24 The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine not exceeding in the whole thirty days in any year.

Transmission of shares

- 25 In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the corporation as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

- 26 Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death, bankruptcy or insolvency.
- 27 If the person so becoming entitled elects to be registered himself he shall deliver or send to the corporation a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
- 28 Where the registered holder of any share dies or becomes bankrupt or insolvent, his personal representatives or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights, whether in relation to meetings of the corporation, or to voting or otherwise, as the registered holder would have been entitled to if he had not died or become bankrupt or insolvent; and where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these Articles, be deemed to be joint holders of the share.

Forfeiture of shares

- 29 If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalments remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with interest which may have accrued.
- 30 The notice shall name a further day, not earlier than the expiration of twenty-eight days from the date of service of the notice, on or before which the payment required by the notice is

to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

- 31 If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 32 A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
- 33 A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding remain liable to pay to the corporation all money which at the date of forfeiture was payable by him to the corporation in respect of the shares, together with interest, at the rate of eight per cent per annum from the date of forfeiture, on the money for the time being unpaid if the directors think fit to enforce payment of such interest, but his liability shall cease to the extent that the corporation receives payment of money in respect of the shares.
- 34 A statutory declaration in writing that the declarant is a director or the secretary of the corporation, and that a share in the corporation has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.
- 35 The corporation may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.
- 36 The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the

same had been payable by virtue of a call duly made and notified.

- 37 Any consideration received by the corporation on the sale or disposition of forfeited shares which exceeds the liability to the corporation of the person whose shares have been forfeited in respect of the shares so forfeited shall be held by the corporation in trust for the person whose shares have been forfeited.

Alteration of capital

- 38 The corporation may from time to time by ordinary resolution:
- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution shall prescribe;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum; so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (d) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.
- 39 Subject to any direction to the contrary that may be given by the corporation in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the corporation of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting the time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the corporation. The directors may likewise so dispose of any new shares which, by reason of the ratio which the new shares bear to shares held

by persons entitled to an offer of new shares, cannot, in the opinion of the directors, be conveniently offered under this Article.

- 40 The corporation may by special resolution reduce its share capital in any manner and with and subject to any incident authorised, and consent required, by law.

General meetings

- 41 An annual general meeting of the corporation shall be held in accordance with the provisions of the Act. All general meetings other than the annual general meetings shall be called extraordinary general meetings.
- 42 Any director may whenever he thinks fit convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.
- 43 Subject to the provisions of the Act and these Articles relating to special resolutions and agreements for shorter notice, fourteen days' notice at the least, exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given, specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the corporation.
- 44 All business shall be special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and the report of the directors and auditors and the election of directors and auditors in the place of those retiring.

Proceedings at general meetings

- 45 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, two members present in person shall be a quorum. For the purposes of this Article '**member**' includes a person attending as a proxy or as representing a corporation which is a member or as representing the committee, trustee or other person having the management of the estate of a person who is of unsound mind or whose person or estate is liable to be dealt

with in any way under the law of the Republic relating to mentally disordered persons.

- 46 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.
- 47 The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the corporation or if there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.
- 48 The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 49 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by any member present in person, by representative or by proxy. Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the corporation, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
- 50 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

- 51 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not have a second or casting vote.
- 52 Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or be represented by and vote by proxy or by attorney, and on a show of hands every person present who is a member or representative of a member shall have one vote, and on a poll every member present in person or by representative shall have one vote for each share he holds.
- 53 In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.
- 54 A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons may be represented by and vote, whether on a show of hands or on a poll, by his committee or by his trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by representative or proxy.
- 55 No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the corporation have been paid.
- 56 No objection shall be raised on the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 57 The instrument appointing a proxy shall be in writing, in the common or usual form, under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, under the seal or under the hand of an officer or attorney duly authorised. A proxy may but need not be a member of the corporation. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

- 58 Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

Corporation

I/We,
of
being a member/members of the abovenamed corporation,
hereby appoint
of
or failing him
of
as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary as the case may be) general meeting of the corporation, to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 .

This form is to be used *in favour of / against the resolution.

*Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

- 59 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a photostat copy of that power or authority shall be deposited at the office of the corporation, or at such other place within Nauru as is specified for that purpose in the notice convening the meeting, not less than five days before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposed to vote, or, in the case of a poll, not less than five days before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- 60 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, unsoundness of mind, revocation or transfer as aforesaid has

been received by the corporation at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

- 61 A resolution in writing contained in the one instrument or in several instruments in like form signed by the members, holding together more than seventy-five per cent of the voting rights of the shares having voting rights at a general meeting of the corporation of which resolution notice has been given in the manner in which notices of general meetings should be given shall be as valid as a resolution or a special resolution passed at a general meeting of the corporation.

Directors' appointment, etc.

- 62 The number of the directors and the names of the first directors and the fees, if any, of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
- 63 At the first annual general meeting of the corporation all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third shall retire from office. A retiring director shall be eligible for re-election.
- 64 The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot.
- 65 The corporation at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election and not being disqualified under the Act from holding office as a director be deemed to have been re-elected, unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.
- 66 The corporation may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

- 67 The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these Articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at the meeting.
- 68 The corporation may by ordinary resolution remove any director before the expiration of his period of office, and may by ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.
- 69 The remuneration of the directors shall from time to time be determined by the corporation in general meeting. That remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the directors or of any committee of the directors or general meetings of the corporation or in connection with the business of the corporation.
- 70 The directors shall not be required to hold any shares in the corporation. A director may be a corporation whether incorporated in Nauru or elsewhere and may act as such through a representative or delegate appointed from time to time by written notice lodged with the secretary.
- 71 The office of director shall become vacant if the director:
- (a) ceases to be a director by virtue of the Act;
 - (b) within Nauru or elsewhere is adjudged bankrupt or insolvent or makes any arrangement or compromise with his creditors generally;
 - (c) becomes prohibited from being a director by reason of any order made under the Act;
 - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons;
 - (e) resigns his office by notice in writing to the corporation;

- (f) for more than six months is absent without permission of the directors from meetings of the directors held during that period;
- (g) without the consent of the corporation in general meeting holds any other office of profit under the corporation except that of managing director or manager; or
- (h) is directly or indirectly interested in any contract or proposed contract with the corporation and fails to declare the nature of his interest in manner required by the Act.

Powers and duties of directors

- 72 The business of the corporation shall be managed by the directors who may pay all expenses incurred in promoting and incorporating the corporation and may exercise all such powers of the corporation as are not, by the Act or by these Articles, required to be exercised by the corporation in general meeting subject, nevertheless, to any of these Articles and to the provisions of the Act.
- 73 The directors may exercise all the powers of the corporation to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the corporation or of any third party.
- 74 The directors may exercise all the powers of the corporation in relation to any official seal for use outside Nauru and in relation to branch registers and may provide for the establishment of branches of the corporation outside the Republic in accordance with the provisions of the Act.
- 75 The directors may from time to time by power of attorney appoint any corporation, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the corporation for such purposes, not exceeding those vested in or exercisable by the directors under these Articles, and for such period, not exceeding two years, and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities, and discretions vested in him.

- 76 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the corporation, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors from time to time determine.
- 77 The directors shall cause minutes to be made:
- (a) of all appointments of officers;
 - (b) of the names of the directors present at all meetings of the corporation and of the directors; and
 - (c) of all proceedings at all meetings of the corporation and of the directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

- 78 All resolutions in writing signed by all the members or directors pursuant to the provisions in that behalf contained in these Articles shall be entered in the minute book containing minutes of the meetings of the corporation or of the directors respectively.

Proceedings of directors

- 79 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. A director may at any time, and the secretary shall on the requisition of a director, summon a meeting of the directors.
- 80 Subject to these Articles questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairman of the meeting shall have no second or casting vote.
- 81 A director may vote and may be counted in the quorum in respect of any contract or proposed contract with the corporation in which he is interested or any matter arising thereout provided, if he be other than a registered director, he discloses his interest as required by the Act, and if he does not do so his vote shall not be counted but he shall still be counted in the quorum.

- 82 Any director with the approval of the directors may appoint any person, whether a member of the corporation or not, to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not be required to hold any share qualification, and shall *ipso facto* vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this Article shall be effected by notice in writing under the hand of the director making the same.
- 83 The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.
- 84 The directors may act notwithstanding any vacancy in their body or failure to appoint the total number of directors fixed by or under these Articles, but if and so long as their number is less than the number fixed by or under these Articles as the necessary quorum of directors, the directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the corporation, but for no other purpose.
- 85 The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.
- 86 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
- 87 A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.
- 88 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a

majority of votes of the members present, and in the case of an equality of votes the chairman shall have no second or casting vote.

- 89 All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is discovered that there was some defect in the appointment of any such director or persons acting as aforesaid, or that they or any of them were disqualified or had never been qualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
- 90 A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

Managing directors

- 91 The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A director so appointed shall not, while holding that office, be subject to retirement by rotation under Articles 63 to 65 hereof or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.
- 92 A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission, or participation in profits, or partly in one way and partly in another, as the directors may determine.
- 93 The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

Associate directors

- 94 The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment. The directors may fix determine and vary the powers, duties and remuneration of any person so appointed, but a person so appointed shall not be required to hold any shares to qualify him for appointment nor have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

Registered director

- 95 The directors shall appoint a registered director of the corporation for such term and at such remuneration and upon such conditions as the other directors and the registered director agree. Any registered director so appointed may be removed by the directors in accordance with the provisions of the Act, but such registered director shall not be subject to the provisions of Articles 63 to 65 relating to retirement and rotation of directors.

Resident secretary

- 96 The resident secretary shall in accordance with the Act be appointed by the directors for such term, and at such remuneration, and upon such conditions as the directors and the resident secretary shall agree. The directors may appoint a general secretary or other secretaries in addition to the resident secretary and subject to the Act fix their respective duties and functions. Any secretary may be removed by the directors subject to the provisions of the Act.

Seal

- 97 The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by or on behalf of a director or by some other person appointed by the directors for the purpose. The directors shall provide for the safe custody of official seals and for the persons by whom any such seal is to be affixed.

Accounts

- 98 The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets as required by the Act and shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the corporation or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any account or book or paper of the corporation except as conferred by any written law or authorised by the directors or by the corporation in general meeting.

Dividends and reserves

- 99 The corporation in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
- 100 The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the corporation.
- 101 No dividend shall be paid otherwise than out of profits and no dividends shall bear interest against the corporation.
- 102 The directors may, before recommending any dividend, set aside out of the profits of the corporation such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the corporation may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the corporation or be invested in such investments, other than shares in the corporation, as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.
- 103 Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this Article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend

is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

- 104 The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the corporation on account of calls or otherwise in relation to the shares of the corporation.
- 105 Any general meeting declaring a dividend may direct payment of such dividend wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of the corporation or of any other corporation or in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.
- 106 Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

Capitalisation of profits

- 107 The corporation in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the corporation's reserve accounts or to the credit of the profit and loss accounts or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members

respectively or paying up in full unissued shares or debentures of the corporation to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in one way and partly in the other, and the directors shall give effect to such resolution.

- 108 Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the corporation providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or, as the case may require, for the payment up by the corporation on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices

- 109 A notice may be given by the corporation to any member either personally or by sending it by post to him at his registered address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting, by airmail if the address is outside Nauru, a letter containing the notice and to have been effected ten days after the date of its posting.
- 110 A notice may be given by the corporation to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.
- 111 A notice may be given by the corporation to the persons entitled to a share in consequence of the death, bankruptcy or insolvency of a member by sending it through the post in a prepaid letter, by airmail if the address is outside Nauru, addressed to them by name, or by the title of representatives of the deceased or assignee of the bankrupt or insolvent, or by a like description at the address, if any, supplied for the purpose

by the person claiming to be so entitled, or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death, bankruptcy or insolvency had not occurred.

- 112 (1) Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- (a) every member except those members who have not supplied to the corporation an address for the giving of notices to them;
 - (b) every person entitled to a share in consequence of the death, bankruptcy or insolvency of a member, who but for his death, bankruptcy or insolvency, would be entitled to receive notice of the meeting; and
 - (c) the auditor for the time being of the corporation.
- (2) No other person shall be entitled to receive notices of general meetings.

Winding-up

- 113 If the corporation is wound up the liquidator may, with the sanction of a special resolution of the corporation, divide amongst the members in kind the whole or any part of the assets of the corporation, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

- 114 Every director, managing director, agent, auditor, secretary and other officer for the time being of the corporation shall be indemnified out of the assets of the corporation against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Act in which relief is granted to him by the Court or Registrar

in respect of any negligence, default, breach of duty or breach of trust.

SECOND SCHEDULE – TABLE B

ARTICLES FOR MANAGEMENT OF A HOLDING CORPORATION

Section 23

Interpretation

- 1 In these Articles words and expressions, unless the context otherwise requires or a contrary intention appears, bear the same meanings as in the *Corporation Act 1971* and further:

'the office' means the registered office of the corporation;

'the Act' means the *Corporation Act 1971*;

'the seal' means the corporate seal of the corporation;

'secretary' means any person appointed to perform the duties of a secretary of the corporation.

Issue of shares

- 2 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares in the corporation may be issued by the directors, or, in the case of a branch of the corporation established outside Nauru, by the directors of the local board, in accordance with the provisions of the Act and any shares may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any ordinary resolution of the corporation, determine.

Bearer shares

- 3 No share warrant shall be issued except upon a request in writing by the person whose name is for the time being upon the register of members as the holder of the share or stock in respect of which the share warrant is to be issued, and there shall be no objection that the request was signed by the person making the same before his name was entered in the register as such holder, provided always that a share warrant may be issued upon a request in writing by a person who subscribed the memorandum of the corporation in respect of one or more of the shares in respect of which he has subscribed the memorandum,

notwithstanding the fact that the name of such subscriber has not been and will not be entered in the register of members as a shareholder.

- 4 No share warrant shall be issued in respect of any shares on which there is any unpaid liability.
- 5 The request for the issue of a share warrant shall be in such form and authenticated by such statutory declaration or other evidence as to the identity of the person making the same and of his right or title to the share or stock as the directors shall from time to time require and shall be lodged at the office of the corporation.
- 6 Before the issue of a share warrant the certificate, if any, then outstanding in respect of the share intended to be included in it shall be delivered up to the directors.
- 7 Share warrants shall be issued under the seal or the branch seal of the corporation or branch of the corporation established outside Nauru and be signed by one director and by the secretary or such other person as the directors may appoint for that purpose or, in the case of a branch, by a member of the local board or such other person as the directors may appoint for that purpose.
- 8 Each share warrant shall relate to such number of shares and be in such language and form as the directors shall think fit. The number originally attached to each share shall be stated in the share warrant.
- 9 Coupons payable to bearer, of such number as the directors shall think fit, shall be attached to share warrants providing for the payment of the dividends upon and in respect of the shares or stock included therein, and the directors shall provide, as they shall from time to time think fit, for the issue of fresh coupons to the bearers for the time being of share warrants when the coupons attached thereto shall be exhausted.
- 10 Each coupon shall be distinguished by the number of the share warrant to which it belongs and by a number showing the place it holds in the series of coupons belonging to the warrant. The coupons shall not be expressed to be payable at any particular period, nor shall they contain any statement as to the amount which shall be payable.
- 11 Upon any dividend being declared to be payable upon the shares specified in a share warrant, the directors shall publish an advertisement in any newspaper they shall think fit or

otherwise give such notice as they think fit stating the amount per share or per cent payable, the date of payment, and the serial number of the coupon to be presented; and thereupon any person presenting and delivering up a coupon of that serial number at the place, or one of the places, stated in the coupon or in the said advertisement, shall be entitled to receive at the expiration of such number of days, not exceeding twenty-eight, after so delivering it up as the directors shall from time to time direct the dividend payable on the share certified in the share warrant to which the said coupon shall belong, according to the notice which shall have been given by advertisement or notice.

- 12 The corporation shall be entitled to recognise an absolute right in the bearer for the time being of any coupons so advertised as aforesaid for payment to such amount of dividend on the share warrant whereto the said coupon shall belong as shall have been as aforesaid declared payable upon presentation and delivery of the coupon and the delivery of such coupon shall be a good discharge to the corporation accordingly.
- 13 If any share warrant or coupon be worn out or defaced the directors may, upon the surrender thereof for cancellation, issue a new one in its stead.
- 14 If any share warrant or coupon be lost or destroyed the directors may, upon the loss or destruction being established to their satisfaction and upon such indemnity being given to the corporation as they shall think adequate, issue another share warrant or coupon in lieu thereof.
- 15 In every case provided for by Articles 13 and 14 a fee of \$1.00, exclusive of all expenses attending the investigation of evidence of loss or destruction and of an indemnity to the corporation, shall be paid to the corporation by the person availing himself of those Articles.
- 16 No person shall as bearer of a share warrant be entitled to attend or vote, or exercise in respect thereof any of the rights of a member, at any general meeting of the corporation, or sign any requisition for or aid in calling any general meeting, unless seven days at least before the day appointed for the meeting, in the first case, and unless before the requisition is left at the office, in the second case, he shall have deposited the share warrant at the office or such other place as the directors appoint, together with a statement in writing of his name and address, and unless the share warrant shall remain so deposited until after the general meeting, or any adjournment

thereof, shall have been held. The names of more than one as joint holders of a share warrant shall not be received.

- 17 There shall be delivered to the person so depositing a share warrant a certificate stating his name and address, and the number of shares or the amount of stock represented by the share warrant so deposited by him and a voting card specifying the number of votes which the warrant so deposited entitles him to cast at a specified general meeting. The production of such a voting card at that specified general meeting shall entitle the bearer thereof to attend and vote at that general meeting in the same way as if he were a registered member of the corporation in respect of the shares or stocks specified in the said certificate. Upon delivering up the said certificate to the corporation the share warrant in respect whereof it shall have been given shall be returned. The certificate may be as follows:

Holding Corporation

No.

This is to certify that _____ of _____ has, in accordance with the Articles of the corporation, deposited the undermentioned share warrants in respect of which he is entitled to attend the general meeting of the corporation to be held at _____ on the _____ day of _____ 19 .

Dated this _____ day of _____ 19 .

Secretary

- 18 No person as bearer of any warrant shall be entitled to exercise any of the rights of a member, save as hereinbefore expressly provided in respect of general meetings, without producing such warrant and stating his name and address, and, if and when the directors so require, permitting an endorsement to be made thereon of the fact, date, purpose and consequence of its production.
- 19 If the bearer of a share warrant shall surrender it to be cancelled, and shall therewith lodge at the office a declaration in writing, signed by him, in such form and authenticated in such manner as the directors require, requesting to be registered as a member in respect of the share specified in the said share warrant, and stating in such declaration his name and address, he shall be entitled to have his name entered as a member in

the register of members of the corporation in respect of the share specified in the share warrant so surrendered.

- 20 Every share warrant shall be transferable by delivery.

Redeemable shares

- 21 Subject to the Act, any shares may be redeemable shares and such shares shall be liable to be redeemed by the corporation. Until the Directors otherwise resolve, such shares shall be redeemable upon the repayment of the amount paid up thereon. Such shares shall be classified as redeemable shares and shall be referred to as such in any certificate or warrant relating to such shares and in the register of members.

Share capital and variation of rights

- 22 If at any time the share capital is divided into different classes of shares, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may, whether or not the corporation is being wound up, be varied by special resolution of the corporation with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Articles relating to general meetings shall apply *mutatis mutandis*, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and so that any holder of shares of the class present in person or by proxy may demand a poll.
- 23 The rights conferred upon the holders of shares of any class issued with preferred or other special rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith or in priority thereto.
- 24 The corporation may exercise the powers of paying commissions of the kind referred to in section 58 of the Act provided that the rate per cent, or the amount of the commission paid or agreed to be paid, shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of ten per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to ten per cent of that price, as the case may be, unless the amount or rate of commission proposed to be paid has at least twenty-one days before payment been notified to all persons entitled to

receive notices of general meetings and no such person has objected in writing. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The corporation may also on the issue of shares pay such brokerage as may be lawful.

- 25 Except as required by law, no person shall be recognised by the corporation as holding any share upon any trust, and the corporation shall not be bound by or be compelled in any way to recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or unit of a share or, except only as by these Articles or by law otherwise provided, any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
- 26 Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the corporation in accordance with the Act but in respect of a share or shares held jointly by several persons the corporation shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
- 27 The corporation shall have a first and paramount lien on every share for all money, whether presently payable or not, called or payable at a fixed time in respect of that share, and the corporation shall also have a first and paramount lien on all shares registered in the name of a single person for all money presently payable by him or his estate to the corporation; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The corporation's lien, if any, on a share shall extend to all dividends payable thereon.
- 28 The corporation may sell, in such manner as the directors think fit, any shares on which the corporation has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

- 29 To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- 30 The proceeds of the sale shall be received by the corporation and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on shares

- 31 The directors may from time to time make calls upon the members in respect of any money unpaid on their shares, whether on account of the nominal value of the shares or by way of premium, and not by the conditions of allotment thereof made payable at fixed times and each member shall, subject to receiving at least twenty-eight days' notice specifying the time or times and place of payment, pay to the corporation at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.
- 32 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
- 33 The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 34 If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding eight per cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.
- 35 Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these Articles be deemed to be a call duly made and payable on the date on which by the terms of issue the

same becomes payable, and in case of non-payment all the relevant provisions of these Articles as to payment of interest and expenses, forfeiture, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

- 36 The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 37 The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may, until the same would, but for the advance, become payable, pay interest at such rate not exceeding, unless the members of the corporation in general meeting or by writing signed by them shall otherwise direct, eight per cent per annum as may be agreed upon between the directors and the member paying the sum in advance.

Transfer of shares

- 38 Subject to these Articles any member may transfer all or any of his shares other than bearer shares by instrument in writing in any usual or common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of both the transferor and the transferee; and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.
- 39 The instrument of transfer must be left for registration at the office of the corporation together with such fee not exceeding \$2.00 as the directors from time to time may require accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and thereupon the corporation shall subject to the powers vested in the directors by these Articles register the transferee as a shareholder and retain the instrument of transfer.

Transmission of shares

- 40 In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the corporation as having any title to his interest in the shares; but nothing herein

contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

- 41 Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death, bankruptcy or insolvency.
- 42 If the person so becoming entitled elects to be registered himself he shall deliver or send to the corporation a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice of transfer were a transfer signed by that member.
- 43 Where the registered holder of any share dies or becomes bankrupt or insolvent his personal representation or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights, whether in relation to meetings of the corporation, or to voting or otherwise, as the registered holder would have been entitled to if he had not died or become bankrupt or insolvent; and where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these Articles, be deemed to be joint holders of the share.

Forfeiture of shares

- 44 If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

- 45 The notice shall name a further day, not earlier than the expiration of twenty-eight days from the date of service of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
- 46 If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 47 A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
- 48 A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding remain liable to pay to the corporation all money which, at the date of forfeiture, was payable by him to the corporation in respect of the shares, together with interest at the rate of eight per cent per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of such interest, but his liability shall cease to the extent that the corporation receives payment of money in respect of the shares.
- 49 A declaration in writing that the declarant is a director or the secretary of the corporation, and that a share in the corporation has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.
- 50 The corporation may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

- 51 The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.
- 52 A corporation shall not be liable to account to the person whose shares have been forfeited as aforesaid for any consideration received by it on the sale or other disposition of the forfeited shares in excess of the liability of that person to the corporation and the corporation shall be entitled to retain any such excess for its own use and benefit but the directors may resolve to pay any such excess over to the person whose shares were forfeited or to his personal representatives or assigns.

Alteration of capital

- 53 The corporation may from time to time by ordinary resolution:
- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution shall prescribe;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum; so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (d) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.
- 54 The corporation may subject to the provisions of the Act by special resolution reduce its share capital in any manner.

General meetings

- 55 Any director may whenever he thinks fit convene a general meeting, and general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.

- 56 Subject to the provisions of the Act and these Articles relating to special resolutions and agreements for shorter notice, fourteen days' notice at the least, exclusive of the date on which the notice is served or deemed to be served, but inclusive of the day for which notice is given, specifying the place, the day and the hour of meeting and the general nature of the business to be considered thereat shall be given to such persons as are entitled to receive such notice from the corporation.

Proceedings at general meetings

- 57 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, one member holding more than fifty per cent of the issued shares giving the right to attend and vote at general meetings or two members present shall be a quorum. For the purposes of this Article '**member**' includes a person attending as a proxy or as representing a corporation which is a member or as representing the committee, trustee or other person having the management of the estate of a person who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law of the Republic relating to mentally-disordered persons.
- 58 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.
- 59 The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the corporation or if there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.
- 60 The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it

shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

- 61 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by any member present in person, by representative or by proxy. Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the corporation, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
- 62 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
- 63 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not have a second or casting vote.
- 64 Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or be represented and vote by proxy or by attorney and on a show of hands every person present who is a member or representative of a member shall have one vote, and on a poll every member present in person or by representative shall have one vote for each share he holds.
- 65 In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.
- 66 A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons may be represented by and vote, whether on a show of hands or on a poll, by his committee or by his trustee or by such other person as properly has the

management of his estate, and any such committee, trustee or other person may vote by representative or proxy.

- 67 No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the corporation have been paid.
- 68 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 69 The instrument appointing a proxy shall be in writing, in the common or usual form, under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, under seal or under the hand of an officer or attorney duly authorised. A proxy may but need not be a member of the corporation. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 70 Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

_____ Holding corporation

I/We,

of

being a member/members of the abovenamed corporation,
hereby appoint

of _____ ,
or failing him,

of _____ ,
as my/our proxy to vote for me/us on my/our behalf at the general meeting of the corporation, to be held on the _____ day of _____ 19 , and at any adjournment thereof.

Signed this _____ day of _____ 19 .

This form is to be used *in favour of / against the resolution.

(Unless otherwise instructed, the proxy may vote as he thinks fit.)

- 71 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a photostat copy of that power or authority shall be deposited at the office of the corporation, or at such other place within Nauru as is specified for that purpose in the notice convening the meeting, not less than five days before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than five days before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- 72 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, unsoundness of mind, revocation or transfer as aforesaid has been received by the corporation at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.
- 73 The holder of a bearer share shall be entitled to vote only in accordance with Article 17.
- 74 A resolution in writing contained in the one instrument or in several instruments in like form signed by the members, other than holders of share warrants, holding together more than seventy-five per cent of the voting rights of the shares having voting rights at a general meeting of the corporation of which resolution notice has been given in the manner in which notices of general meetings should be given shall be as valid as a resolution or a special resolution passed at a general meeting of the corporation.

Directors' appointment, etc.

- 75 The number of the directors, the names of the first directors and the fees, if any, of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

- 76 The corporation may from time to time by ordinary resolution increase or reduce the number of directors.
- 77 The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these Articles.
- 78 The corporation may by ordinary resolution remove any director and may by ordinary resolution appoint another person in his stead.
- 79 The remuneration of the directors may be fixed or varied by the corporation by ordinary resolution and shall be deemed to accrue from day to day; the directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or of any committee of the directors or general meetings of the corporation or in connection with the business of the corporation.
- 80 The directors shall not be required to hold any shares in the corporation. A director may be a corporation whether incorporated in Nauru or elsewhere and may act as such through a representative or delegate appointed from time to time by written notice lodged with the secretary.
- 81 The office of director shall become vacant if the director:
- (a) ceases to be a director by virtue of the Act;
 - (b) within Nauru or elsewhere is adjudged bankrupt or insolvent or makes any arrangement or compromise with his creditors generally;
 - (c) becomes prohibited from being a director by reason of any order made under the Act;
 - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons;
 - (e) resigns his office by notice in writing to the corporation.

Powers and duties of directors

- 82 The business of the corporation shall be managed by the directors who may pay all expenses incurred in promoting and incorporating the corporation and may exercise all such powers of the corporation as are not, by the Act or by these Articles, required to be exercised by the corporation in general meeting, subject, nevertheless, to any of these Articles and to the provisions of the Act.
- 83 The directors may exercise all the powers of the corporation to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the corporation or of any third party.
- 84 The directors may exercise all the powers of the corporation in relation to any official seal for use outside Nauru and in relation to branch registers and may provide for the establishment of branches of the corporation outside Nauru in accordance with the provisions of the Act.
- 85 The directors may from time to time by power of attorney appoint any corporation, firm or person or body of persons whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the corporation for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the directors under these Articles, and for such period not exceeding two years and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 86 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the corporation, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors from time to time determine.
- 87 The directors shall cause minutes to be made:
- (a) of all appointments of officers;
 - (b) of the names of the directors present at all meetings of the corporation and of the directors; and

- (c) of all proceedings at all meetings of the corporation and of the directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

- 88 All resolutions in writing signed by members or directors pursuant to the provisions in that behalf contained in these Articles shall be entered in the minute book containing minutes of the meetings of the corporation or of the directors respectively.

Proceedings of directors

- 89 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. A director may at any time, and the secretary shall on the requisition of a director, summon a meeting of the directors.
- 90 Subject to these Articles questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairman of the meeting shall have no second or casting vote.
- 91 A director may vote and be counted in the quorum in respect of any contract or proposed contract with the corporation in which he is in any way interested or on any matter arising thereout and no contract entered into by the corporation in which a director is in any way interested shall by reason thereof be voidable and no director shall be liable to account to the corporation for any profits realised by such contract or any office of profit held by him by reason of his being a director.
- 92 Any director with the approval of the directors may appoint any person, whether a member of the corporation or not, to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not be required to hold any share qualification, and shall *ipso facto* vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this Article shall

be effected by notice in writing under the hand of the director making the same.

- 93 The quorum necessary for the transaction of the business of the directors may be fixed by the directors; but until so fixed it shall be one less than the total number of directors unless the total number of directors is less than three, when the quorum shall be all the directors.
- 94 The directors may act notwithstanding any vacancy in their body or failure to appoint the total number of directors fixed by or under these Articles but if and so long as their number is less than the number fixed by or under these Articles as the necessary quorum of directors, the directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the corporation, but for no other purpose.
- 95 The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.
- 96 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
- 97 A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.
- 98 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have no second or casting vote.
- 99 All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified or had

never been qualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

- 100 A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

Managing directors

- 101 The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment but such appointment shall be automatically determined if the appointee ceases from any cause to be a director.
- 102 A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission or participation in profits, or partly in one way and partly in another, as the directors may determine.
- 103 The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

Registered director

- 104 The directors shall appoint a registered director of the corporation for such term and at such remuneration and upon such conditions as the other directors and the registered director agree. Any registered director so appointed may be removed by the directors.

Resident secretary

- 105 The resident secretary shall, in accordance with the Act, be appointed by the directors for such term, and at such remuneration, and upon such conditions as the directors and the resident secretary shall agree. The directors may appoint a

general secretary or other secretaries in addition to the resident secretary and subject to the Act fix their respective duties and functions. Any secretary may be removed by the directors subject to the provisions of the Act.

Seal

- 106 The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by or on behalf of a director or by some other person appointed by the directors for the purpose. The directors shall provide for the safe custody of official seals and for the persons by whom any such seal is to be affixed.

Accounts

- 107 The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets as required by the Act and shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the corporation or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any account or book or paper of the corporation except as conferred by any written law or authorised by the directors or by the corporation in general meeting.

Dividends and reserves

- 108 The directors may declare dividends.
- 109 The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the corporation.
- 110 No dividend shall be paid otherwise than out of profits and no dividend shall bear interest against the corporation.
- 111 The directors may, before declaring any dividend, set aside out of the profits of the corporation such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the corporation may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of

the corporation or be invested in such investments as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

- 112 Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this Article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.
- 113 The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the corporation on account of calls or otherwise in relation to the shares of the corporation.
- 114 Any dividend may be paid wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of the corporation or of any other corporation or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.
- 115 Any dividend, interest, or other money payable in cash in respect of registered shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

Purchase of own shares

- 116 The corporation may by authority of a special resolution purchase its own shares in any manner permitted by the Act.

Capitalisation of profits

- 117 The directors may resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the corporation's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions, on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the corporation to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid or partly in the one way and partly in the other.
- 118 Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the corporation providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or, as the case may require, for the payment up by the corporation on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices

- 119 A notice may be given by the corporation to any member either personally or by sending it by post to him at his registered

address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting, by airmail if the address is outside Nauru, a letter containing the notice and to have been effected ten days after the date of its posting.

- 120 A notice may be given by the corporation to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.
- 121 A notice may be given by the corporation to the persons entitled to a share in consequence of the death, bankruptcy or insolvency of a member by sending it through the post in a prepaid letter, by air mail if the address is outside Nauru addressed to them by name, or by the title of representatives of the deceased or assignee of the bankrupt or insolvent, or by a like description at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death, bankruptcy or insolvency had not occurred.
- 122 (1) Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- (a) every member, other than holders of share warrants, except those members who have not supplied to the corporation an address for the giving of notices to them;
 - (b) every person entitled to a share, other than a bearer share, in consequence of the death, bankruptcy or insolvency of a member, who but for his death, bankruptcy or insolvency would be entitled to receive notice of the meeting;
 - (c) the auditor for the time being of the corporation.
- (2) Subject to the provisions of paragraph (3) of this Article no other person shall be entitled to receive notices of general meetings.
- (3) If pursuant to the terms of issue thereof there is endorsed on any share warrant issued by the corporation a statement that notices of general meetings of the corporation shall be advertised in a particular manner notices of all general meetings shall while any such share warrant is outstanding also be given by advertisement in such manner.

Winding-up

- 123 If the corporation is wound-up the liquidator may divide amongst the members in kind the whole or any part of the assets of the corporation, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

- 124 Every director, managing director, agent, auditor, secretary and other officer for the time being of the corporation shall be indemnified out of the assets of the corporation against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Act in which relief is granted to him by the Court or Registrar in respect of any negligence, default, breach of duty or breach of trust.

SECOND SCHEDULE – TABLE C

TERMS OF DEBENTURE OF A CORPORATION

Section 66

- 1 This Debenture secures the principal sum shown on its face payable in Australian dollars.
- 2 The principal sum is payable on demand by the Debenture Holder.
- 3 Until repayment this Debenture will carry interest at the rate (if any) shown on the face of this Debenture on the principal sum payable yearly.
- 4 The corporation is not entitled to redeem this Debenture without the Holder's consent.
- 5 The provisions of the *Corporation Act 1971* and of the Articles of the corporation giving the members or any class of the members of the corporation the right and power to vote and to demand a poll shall, so far as they relate to the corporation for the period while this Debenture is unredeemed, be void and of no effect for any purpose whatsoever and the provisions contained in paragraphs (a) to (h) inclusive of subsection (12) of Section 66 of the Act shall apply.

Notes for Corporations Act 1972

Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Corporation Act 1972</i>	1972/05	17.02.1972	17.02.1972 (Parts I, XI and XII); 08.03.1972 (remainder) (GN.40 of 1972)
<i>Corporation (Amendment) Act 1973</i>	1973/01	26.01.1973	26.01.1973
<i>Insurance Act 1974</i>	1974/06	23.07.1974	01.11.1974 (GN.311 of 1974)
<i>Corporation (Amendment) Act 1975</i>	1975/14	20.11.1975	20.11.1975
<i>Corporation (Amendment) Act 2003*</i>	2003/01	27.03.2003	27.03.2003
<i>Corporation (Amendment) Act 2004†</i>	2004/10	06.09.2004	06.09.2004
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011

* Purported amendments (insertion of ss. 3A, 5A and 5B) by Act 2003/01 have not been incorporated into this compilation: see Notes on Unincorporable Amendments, below.

† Purported amendments (of ss. 5A and 5B) by Act 2004/10 have not been incorporated into this compilation: see Notes on Unincorporable Amendments, below.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
om. = omitted os. = omitted and substituted

Provision affected	How affected
Section 1	Subs. (1) os. by Act 2011/08
Section 5	Subs. (1) am. by Act 1974/06. Subs. (2) am. by Act 1974/06. Subs. (5) am. by Act 1974/06, Act 2003/01. Subs. (9) ad. by Act 1975/14.
Section 7	Subs. (2) am. by Act 1973/01.‡
Section 12	Subs. (2) am. by Act 2003/01. Subs. (3) rep. by Act 2003/01.
Section 15	Subs. (23) am. by Act 1973/01.
Section 15A	Ad. by Act 1973/01.
Section 16	Subs. (1) am. by Act 1975/14.
Section 19	Subs. (6) am. by Act 1975/14.
Section 42	Subs. (3) am. by Act 1973/01.

As in force from 15 April 2011

Corporations Act 1972

Provision affected	How affected
Section 179	Subs. (1) am. by Act 1975/14.
Section 200	Subs. (1) renumbered by Act 1973/01. Subs. (2) ad. by Act 1973/01.
Section 218	Subs. (5) ad. by Act 1975/14.
Section 232A	Ad. by Act 1973/01. Subs. (1) am. by Act 1975/14. Subs. (5) ad. by Act 1975/14. Subs. (6) renumbered by Act 1975/14.
Section 249	Rep. by Act 2003/01.
Section 250A	Ad. by Act 1973/01.

‡ A purported amendment of section 7(2) by Act 1975/14 has not been incorporated into this compilation: see footnote to that subsection.

Note on Unincorporable Amendments

Note 1: The *Corporation (Amendment) Act 2003* ('the 2003 Act') successfully amended sections 5 and 12 of the *Corporation Act 1972* ('the 1972 Act') and repealed section 249; it also purported to insert new sections 3A, 5A and 5B in the 1972 Act. However, as that portion of the 2003 Act that relates to the proposed insertion of new provisions does not contain any section numbers or amending commands, the proposed amendments were ineffective and cannot be incorporated in this compilation. The 2003 Act does contain amendment descriptors in headings, but as headings are not part of the written law (see section 17(2) of the *Interpretation Act 1971*) these cannot perform the role of amending commands. The flaws in the 2003 Act cannot be remedied editorially under regulation 6 of the *Legislation Publication Regulations 2011*, as that provision operates only when an amendment has been effected but incorrectly numbered or located.

Note 2: In spite of the ineffectiveness of the proposed insertion of new sections 3A, 5A and 5B, those proposed provisions are reproduced below for the sake of providing a complete historical record of Parliament's intentions in relation to the 1972 Act:

3A Application of the *Banking Act 1975*

For the purposes of clarity and to avoid confusion, it is hereby declared that, the *Banking Act 1975* does not have any application to the operations of a banking licence granted under section 5 of the *Corporation Act*, to carry on banking business outside Nauru.

5A Continuation and validity of existing licences

- (1) The power to repeal the granting of licences to corporations and foreign corporations to carry on business of banking pursuant to section 5 of the *Corporation Act*, shall not continue to exist, but:
 - (a) shall expire at the end of 30 days after the commencement of this Act;
 - (b) unless the Corporation is able to establish that it is either the wholly owned subsidiary of a Bank licensed in the United States of America, the Commonwealth of Australia, New Zealand or a member of the European Union, to carry on banking there, in which case

Corporations Act 1972

the registration of such a corporation shall expire 6 months after the commencement of this Act; and

- (c) under no circumstances shall they be renewed.
- (2) A licence granted pursuant to section 5 of the *Corporation Act*, to carry on banking business is, with effect from the date of its annual expiry or the date which is 30 days after the commencement of this Act, whichever first occurs, for all purposes, void unless it is a bank prescribed under section 5A(1)(b), which in this case, with effect from the date of its annual expiry or the date which is 6 months after the commencement of this Act, whichever occurs first, for all purposes, void.

5B Cessation of banking licences

Where a licence to carry on banking expires pursuant to section 5 of the *Corporation Act*, before the renewed period of the licence expires, the Republic shall ensure that, upon application by the corporation granted the licence, a refund of the proportionate amount of any licence fee paid in respect of the licence for the period after the licence expires pursuant to the Act, shall be made within 12 months after the receipt of such application.

Note 3: Section 3 of the *Corporation (Amendment) Act 2004* provides as follows:

‘The *Corporation (Amendment) Act 2003* is amended by

- (a) Deleting section 5A(1), section 5A(1)(a), section 5A(1)(b), section 5A(1)(c) and section 5A(2).
(b) The following new section 5A is added.

“5A

- (1) The power of the Minister to grant, renew or repeal licences to corporations and foreign corporations to carry on business of banking pursuant to section 5 of the *Corporation Act* shall cease to exist.
- (2) Any existing licences granted to corporations and foreign corporations to carry on the business of banking pursuant to section 5 of the *Corporation Act* shall expire and be void at the end of 30 days after the commencement of this Act.
- (3) All licences voided under section 5A(2) shall not be renewed.”.

As noted in Note 1, above, the 2003 Act did not have the effect of inserting new section 5A. If it had done, the amendment in 2004 of the 2003 Act at a time after the 2003 Act had commenced would not have had the effect of amending the text of section 5A in the 1972 Act.

Note 4: Section 4 of the *Corporation (Amendment) Act 2004* provides (in part) as follows:

‘Section 5B of the *Corporation (Amendment) Act 2003* is amended by inserting immediately after the word and figure “section 5” and before the word “of”, the letter “A”.

As noted in Note 1, above, the 2003 Act did not have the effect of inserting new section 5B. If it had done, the amendment in 2004 of the 2003 Act at a time after the 2003 Act had commenced would not have had the effect of amending the text of section 5B in the 1972 Act.