

IMPORTANT

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SAMOA

INTERNATIONAL COMPANIES ACT 1987

(as amended, 2005)

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INTERNATIONAL COMPANIES ACT 1987

An Act to provide for the incorporation, registration and administration of International and Foreign Companies; and for purposes connected therewith.

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

PART I - Preliminary

Short title 1.(1) This Act may be cited as the International Companies Act 1987. (2) This Act shall come into force on such date as may be specified by the Head of State by Order.

Interpretation

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

“Allot” includes sell, issue, assign, and convey; and “allotment has a corresponding meaning;

“Articles” means articles of association or in the case of a limited life international company, articles of organisation;

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

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2005;

“Bearer debenture” means any debenture of an international company which is either payable to or enforceable by any person who for the time being lawfully has possession of that debenture;

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

“Books” includes accounts, deeds, writings, invoices, records and documents;

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

“Capital surplus” means the entire surplus of an international company other than its earned surplus;

“Central Bank” means the Central Bank of Samoa established pursuant to the Central Bank of

Samoa Act 1984;

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

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

“Company” means any body corporate formed or incorporated (other than a domestic company) whether in Samoa or outside Samoa and includes any foreign company (other than an overseas company registered under the Companies Act 1955”) but does not include a corporation sole;

“Company Limited by Shares” means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and such members shall be called shareholders;

“Company Limited by Guarantee” means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up and such members shall be called guarantee members;

“Company Limited by Both Shares and Guarantee” means a company having the liability of its members limited by the memorandum;

- (a) In the case of members who have given a guarantee, to such amount as they have respectively undertaken to contribute to the assets of the company in the event of it being wound up and such members shall be called guarantee members; and
- (b) In the case of members who are shareholders, to the amount, if any, unpaid on the shares respectively held by them and such members shall be called shareholders;

“Contributory” in relation to an international company, means a person liable to contribute to the assets of the company in the event of it being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

“Court” means Supreme Court of Samoa;

“Creditor” means any person capable of enforcing any debt (whether contingent or actual) against the company in Samoa (excluding for the avoidance of doubt, any taxation, fine or penalty imposed by any government or governmental or semi-governmental authority of a government other than Samoa;

“Debt” means any actual or contingent debt, but shall exclude any taxation, fine or penalty or any liability under any public law by any foreign government and any other debt or obligation incapable of being enforced in Samoa;

“Deputy Registrar” means a Deputy Registrar of International and Foreign Companies appointed under section 8(1)(b).

“Director” means any person occupying the position of director of an international company and any person held out by a company to be a director.

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

“Dollar” means a dollar unit of the currency of the United States of America.

“Domestic company” means a company incorporated under the Companies Act 1955;

“Earned surplus” means that portion of the surplus earned by an international company equal to the balance of its net profits, income, gains and losses from the date of incorporation or from the latest date when a deficit distribution to shareholders and transfers made out of earned surplus accounts 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 of property or assets of another company, whether incorporated in Samoa or not;

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

“Foreign company” means -

- (a) a corporation, company, society, association or other body incorporated outside Samoa; 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 Samoa;

“Foreign Government” means any government, governmental authority or agency or any semi-governmental authority or agency (other than the government of Samoa or any governmental authority or agency or any semi governmental authority or agency of Samoa);

“Insolvent” means unable to pay debts as they become due;

“International company” means a company incorporated pursuant to this Act and includes a company deemed to be incorporated under this Act pursuant to Section 16;

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

“Limited life international company” means an international company incorporated or registered as a limited life international company pursuant to section 30A of this Act;

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

“Long term international company” means an international company which is registered for a period of five years or more and has paid the long term registration fee or any renewals thereof;

“Long term registration fee” means a long term registration fee referred to in Section 14A;

“Manager” or “Managers” means a person or the persons named or designated as the manager or managers of a limited life international company pursuant to the provisions of the articles of organisation or an operating agreement;

“Meeting” shall have the extended meaning ascribed to it in section 96(4) of this Act.

- (a) “Member” in relation to a company, other than a limited life international company, means a person whose name is entered in the company’s Register of

Members, whether as a shareholder or a guarantee member, or who is entitled to have his name so entered;

- (b) In relation to a limited life international company means a person whose name is entered as a member in the Register of Members of a limited life international company.

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

“Minister” means the Minister of Finance;

“Month” means calendar month;

“Officer” in relation to a company, includes, -

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

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

“Operating agreement” means a written agreement of the members as to the affairs of a limited life international company and the conduct of its business;

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

“Period of long term registration” means a period of registration of 5, 10 or 20 years from the date of registration (or any renewal thereof) of an international company as a long term international company, and in the case of first registration (except a first registration occurring on the 29th day of November in any year) includes a fraction of a year to the 29th day of require) of the date of first registration; November next following the fifth, tenth, or twentieth anniversary (as the case may

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

“Post” includes communications by mail, courier, freight, telex or facsimile;

“Prescribed” means prescribed by or under this Act;

“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 company for a period;

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

“Public” includes those persons or classes of persons in Samoa or elsewhere who are for the relevant purposes regarded, in Samoa by the law of Samoa, or elsewhere by the law of the place where they are, as being “public” or “the public”;

“Public notice” means a notice published in a newspaper circulating in Samoa, in Samoan and in English, conveying the general effect of a matter or thing done or intended to be done; and “publicly notified” has a corresponding meaning;

“Register of Members”

- (a) In relation to a company other than a limited life international company, means the Register kept pursuant to section 105;
- (b) In relation to a limited life international company, means the register kept by a limited life international company, pursuant to section 30G in which the names of its members are entered.

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

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

“Registrar” means the Registrar of International and Foreign Companies, and includes a Deputy Registrar;

“Regulations” means Regulations made under this Act;

“Renewal fee” means an annual renewal fee, as defined in section 14 or in the case of a limited life international company, section 30K and includes a long term renewal fee referred to in section 14A;

“Resident agent” means a trustee company, an officer of a trustee company or a wholly owned subsidiary of a trustee company appointed to be such under section 30J;

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

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

“Share” in relation to an international company means a share in the share capital of that company and includes stock.

“Share warrant” has the meaning assigned to it by subsection (1) of section 35 of this Act;

“Surplus” means the excess of the net assets of an international company over its issued capital.

“Table A” means Table A in Schedule 2;

“Table B” means Table B in Schedule 2;

“Table B Debenture” means:

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

“Trustee Company” means a company incorporated for the purpose of undertaking or offering to undertake, as a whole or a part of its business, all or any of the duties of a trustee and which is registered under the Trustee Companies Act 1987;

“Year” means calendar year:

- (2) For the purposes of this Act, a person including a company shall be deemed to hold a beneficial interest in a share;
 - (a) if that person, either alone or together with other persons, is entitled (otherwise than as a trustee for, or on behalf of, or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the shares; or
 - (b) if that person, being a company holds any beneficial interest in a share of another company which holds, or a subsidiary of which holds, any beneficial interest in that first mentioned share.
- (3) Whenever in this Act any person holding or occupying particular office or position is mentioned or referred to, such mention or reference shall, unless the contrary intention appears, be taken to include all persons who shall at any time thereafter occupy for the time being the said office or position.
- (4) Any provision of this Act overriding or interpreting a company's articles shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.
- (5) Where the provisions of this Act are inconsistent with the provisions of any Act, other than the Constitution of Samoa, the provisions of this Act shall prevail.

Citation of Reference

- 3. Where a provision of this Act refers, -
 - (a) to a part or section by a number but does not identify it as being part of any particular Act, the reference shall be read and construed as a reference to the

part or section designated by that number, of or to this Act; or

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

Related Companies

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

- (a) that other company -
 - (i) controls the composition of the board of directors of the first-mentioned company;
 - (ii) controls more than half of the voting power of the first-mentioned company; or
 - (iii) holds more than half of the issued shares or share capital of the first-mentioned company (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits and capital); or
- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.

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

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

director or other officer of that other company.

- (3) In determining whether one company is subsidiary of another company -
- (a) any shares held or power exercisable by that other company in a trustee or fiduciary capacity shall be treated as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), any shares held or power exercisable -
 - (i) by any person as a nominee for that other company, except where that other company is concerned only in a trustee or fiduciary capacity; shall be treated as held or exercisable by that, other company;
 - (ii) by, or by a nominee for a subsidiary of that other company, not being a subsidiary which is concerned only in a trustee or fiduciary capacity shall be treated as held or exercisable by that other company;
 - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary, not being held or exercisable as mentioned in paragraph (c) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

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

(5) Where a company -

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

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

Application of Act

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

Restriction on Membership Interest in International Company

6.(1) No natural person who is a citizen or resident of or domiciled in Samoa and no company incorporated or registered under the Companies Act 1955 except a trustee company, may either

individually or with another person or persons and whether directly or indirectly and whether in consequence of any trust or similar arrangement or otherwise, be or become a shareholder in or guarantee member of an international company under this Act or a foreign company that has the centre of its administrative management in Samoa unless that foreign company is registered under the Companies Act 1955.

Permitted purposes for incorporation

7.(1) An international company may be incorporated for any lawful purpose or purposes, and may carry on any business which may lawfully be carried on by an individual but it shall not carry on the businesses of banking, insurance or acting as a trustee company unless it is licensed or otherwise permitted so to do under the laws currently in force in Samoa.

(2) For the purposes of this section, an international company shall not be regarded as carrying on business as a trustee company or carrying on the business of acting as a trustee company, by acting merely as the trustee or one of the trustees of not more than three trusts registered under the International Trusts Act 1987.

PART II - Administration of Act

Registrar of companies

8.(1) There shall be appointed, by the Authority -

- (a) a Registrar of International and Foreign Companies to have the charge and control of the International Companies Office and to carry out the duties and functions vested in him by or under this or any other Act and such appointment shall be publicly notified;
- (b) from time to time such Assistant or Deputy Registrars of International and Foreign Companies and other officers as are required for the purposes of this Act.

(2) Anything by this Act appointed or authorised or required to be done by the Registrar may be done by any such Assistant or Deputy Registrar and shall be as valid and effectual as if done by the Registrar subject to such conditions and restrictions as may be set out in the instrument of appointment or in any subsequent changes thereto.

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

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

(5) 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.

(6) A company or any officer thereof shall, on being required by the Registrar, or a person authorised

by the Registrar, produce any such book, register or record.

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

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

Lodging Documents

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

(2) Every application to the Registrar for any certificate issued under the Act or for any extract or copy of any document filed with the Registrar shall be made through a trustee company.

Provided that this subsection shall not apply where an application is made in respect of an international company by a member of that company and the document, certificate, extract or copy is for his own personal use.

Registered company auditors

10.(1) The Registrar may, by public notice appoint any person or company to be a registered company auditor.

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

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

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

(5) The Registrar may from time to time prescribe and publicly notify annual fees for registration as a registered company auditor.

(6) A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any international company or foreign company under this Act and shall not prepare for or on behalf of a company any report required by this Act to be prepared by a registered company auditor -

- (a) if he or it is not at the time of his so acting or preparing such report a registered company auditor;
- (b) if he or it, or any company related to him or it is indebted to the company or a related company in an amount exceeding 5000 dollars or an equivalent amount in any other currency;
- (c) if he or it, or any company related to him or it is an officer of the company;
- (d) if he or it or any company related to it is -
 - (i) a partner, employer or employee of the company; or

- (ii) a partner or employer or employee of an officer of the company; or
- (e) if he is -
 - (i) a spouse of an officer of the company; or
 - (ii) a spouse of an employee of an officer of the company.

(7) For the purposes of subsection (6) a person shall be deemed to be an officer of an international or foreign company if he is an officer of a company that is deemed to be related to the company by virtue of section 4(5) or he has, at any time within the proceeding period of 12 months, been an officer or promoter of the company or of such other company.

(8) For the purposes of this section, a person shall not be deemed to be an officer by reason only of his having been appointed as auditor of an international or foreign company.

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

Official liquidator

11.(1) For the purposes of proceedings in winding-up international companies the Registrar may, by public notice appoint any person to be an official liquidator.

- (2) The Registrar may revoke any appointment made under subsection (1).
- (3) No person shall be appointed or act as liquidator of an international company -
 - (a) if he is not an official liquidator; or
 - (b) if he, or any company related to him is indebted to the company in liquidation or to a company which is deemed to be related to that company in liquidation by virtue of section 4(5) in an amount exceeding \$1,000 or an equivalent amount in any other currency; and
 - (c) unless he consents.
- (4) The Registrar shall keep a register of official liquidators.
- (5) Where an official liquidator is appointed to be a liquidator of an international company, whether by the Court or in a voluntary winding-up, he shall forthwith notify the Registrar in writing of any interest which he, or any company related to him has in the company, as an officer, employer or employee of the company or as a partner employer or employee of an officer of the company.
- (6) The Registrar may from time to time prescribe and publicly notify annual fees for registration as an official liquidator.

Registers

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

(2) Any officer, member, debenture holder, director or liquidator or an international or foreign company, or any other person with the written permission of such officer, member, debenture holder, director or liquidator or who can demonstrate to the Registrar that he has a good reason for doing so, may, subject to this Act and on payment of the prescribed fee -

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

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

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

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

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

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

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

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

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

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

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

- (a) any provisions of this Act or of any other law which requires the lodging in any manner with the Registrar of any return, account or other document or the

giving of notice to him on any matter; or

- (b) any request of the Registrar to amend or complete and re-lodge any document or lodge a fresh document, fails to make good the default within 60 days after the service on the company or person of a notice requiring it to be done, the Registrar may order the company and any officer thereof or such person to make good the default within such time as is specified in the order.

(7) Nothing in this section shall prejudice the operation of any enactment or other section of this Act imposing penalties on a company or a company's officers or such person in respect of any such default as aforesaid.

PART III - Constitution of Companies

DIVISION 1 - INCORPORATION

Formation of companies

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

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

(3) Every international company, other than a limited life international company, incorporated under this Act shall be;

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

(4) Every limited life international company incorporated under this Act shall be a company limited by shares.

Registration and incorporation

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

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

company's knowledge, all or any of the requirements of this Act have been complied with and the Registrar may accept that certificate as sufficient evidence of such compliance.

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

(4) Every international company to which the provisions of section 14A do not apply, and which on the 31st day of January 1993 held a valid certificate of incorporation or registration (or a valid renewal certificate thereof) shall, notwithstanding any law in effect at the time of the issue of the certificate, be liable to pay to the Registrar an annual renewal fee on the 30th day of November 1993, and thereafter shall be liable to pay to the Registrar on the 30th day of November of each following year, such annual renewal fee as may be prescribed.

(5) Except where the provisions of section 14A apply, every international company incorporated or registered on or after the 1st day of February 1993 shall be liable to pay to the Registrar on the 30th day of November of each year following the year in which it is incorporated or registered, such annual renewal fee as may be prescribed.

(6) Until such time as an international company is dissolved pursuant to the provisions of this Act, the international company shall continue its corporate existence (without rendering defective any legal or other proceedings instituted by or against the company or affecting any rights, powers, authorities, duties, functions, liabilities or obligations of the company or any person) notwithstanding that an annual renewal fee which is due and payable by the international company has not been paid.

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

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

- (a) if the articles so permit and the subscriber so desires and has paid up in full the nominal value of his shares, be issued with a share certificate or certificates for the shares agreed to be taken by him in the memorandum and the appropriate entry shall be made in the company's register of members; or
- (b) in any other case, without formal allotment of shares, he shall be entered as a member in its register of members in respect of the share or shares subscribed for or by him in the memorandum.

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

thereof and -

- (a) a request addressed to the trustee company, in writing and signed by him that -
 - (i) the trustee company incorporate an international company on his behalf;
 - (ii) no share or share certificates be issued to him;
 - (iii) he not be a member of the international company so incorporated; and
 - (iv) one share be issued on incorporation to the trustee company;
- (b) an amount sufficient to pay -
 - (i) the fees payable on lodgement of the documents to be lodged for incorporation of the company; and
 - (ii) the fees payable to the trustee company in respect of its services in and about the incorporation of the company and the issue of the share to be issued pursuant to the request in paragraph (a); and
- (c) the name or names of a person or persons nominated for the purposes of section 15;
- (d) if applicable, form of Articles of Association provided for under subsection (18) of this section.

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

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

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

(14) Where a request of the kind referred to in subsection (10)(a) has been made to a trustee company, the person making the request shall not have any right to have an international company incorporated or to have any shares or debentures issued and it shall be in the absolute discretion of the trustee company whether upon receiving that request it acts in accordance with subsection (11), or not, provided that if it does not act in accordance with the said request that trustee company shall, after deducting such costs, charges and expenses as in its discretion are properly attributable to its consideration of that request, repay the balance to the person making the request or as he directs.

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

15.

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

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

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

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

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

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

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

Long term international companies

14A.(1) An international company may elect to be registered and remain as a long term international company by paying to the Registrar such long term registration and long term renewal fees as may be prescribed.

(2) A long term registration of an international company may be effected or renewed for a period of long term registration on payment of such prescribed renewal fee as may be applicable.

(3) A long term international company may upon the expiry of any period of long term registration, elect to continue its registration on an annual basis pursuant to section 14.

(4) If upon the day after the expiry of its period of long term registration an international company fails or has failed to pay a renewal fee, it shall be liable to pay by way of penalty such additional fee or fees as may be prescribed.

Issue of bearer debentures

15.(1) Unless a person desiring the incorporation of an international company under section 14(10) delivers to the trustee company, together with the unsigned memorandum, a written request that a debenture should not be issued, the international company shall, as soon as it is convenient after incorporation, prepare a form of bearer debenture which shall incorporate the provisions set forth in Table B and shall cause the same to be signed by the resident director, which form of bearer debenture shall be expressed to secure to the bearer a sum equal to the fees paid to the trustee company under section 14(10)(b)(ii), expressed in dollars, 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 section 14(10) or as he directs.

(2) A bearer debenture issued by an international company shall not take effect as a debenture, nor shall it give rise to rights against the company, until the company receives, at its registered office in Samoa, the receipt for the bearer debenture referred to in subsection (1) duly executed by the person to whom that receipt was posted or delivered pursuant to that subsection, or by some other person authorised to sign that receipt for or on behalf of the person to whom it was posted or delivered.

(3) Upon a receipt for a form of bearer debenture, signed by, or for or on behalf of, the person to whom the same was posted or delivered, being received at the registered office of an international company in Samoa, the same shall be entered in the records of the company and thereupon the company shall be deemed to have resolved to issue the bearer debenture and the same shall thereupon be a specialty debt due from the company to the bearer situate in the place where the bearer debenture is and a receipt purporting to be signed as aforesaid shall be prima facie evidence that it was so signed.

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

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

(6) In the event of a form of bearer debenture of the kind referred to in subsection (1) not having been issued or a receipt for such a form, if issued, not having been received by the international company at its registered office in Samoa, duly executed by or for and on behalf of the person to whom it was posted or delivered, by the expiration of 3 months from the date of incorporation of the company by the trustee company to which the request for such incorporation was made, the share issued to the trustee company under section 14 and any income, rights and accruals thereto shall, from that time on, be held by that trustee company upon trust for the person or persons, if any, nominated under section 14(10) or, if there is no such nomination, for the person who made the request referred to in section 14(10) and the trustee company shall be entitled to be indemnified out of the assets of the company for its reasonable costs and expenses in administering the trusts upon which that share is held and in making payment of such fees and charges payable by the company as it sees fit to make on behalf of the company.

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

administrator of his estate, as the case may be.

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

(9) Where no nomination under section 14(10) has been made, and the person who made the request for the incorporation of an international company referred to in section 14(10)(a) has died before the expiration of 3 months from the date of incorporation of the company by the trustee company to which that request for incorporation was made, the share issued to the trustee company under section 14 and any income, rights and accruals thereto from that time on, shall be held by the trustee company upon trust for the executor of the will of that person or for the administrator of his estate, as the case may be.

Transfer to Samoa of company incorporated outside Samoa

16.(1) A company incorporated as a company or corporation under the laws of any country other than Samoa, or of any jurisdiction within such a country, may, if not prohibited under the laws of that other jurisdiction, apply to the Registrar to be registered as being continued in Samoa as if it had been incorporated under this Act.

(2) Upon application under subsection (1), supported by such material as he considers adequate and satisfactory, the Registrar subject to section 225 and the payment of any prescribed fee may register such company as being so continued and if so registered, the company shall be deemed thereafter to be an international company under this Act and domiciled in Samoa. Provided that no company may be registered under this section if -

- (a) its winding up has commenced; or
- (b) a receiver of its property has been appointed; or
- (c) there is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted.”

(3) The registration of a company under this section shall not operate -

- (a) to create a new legal entity;
- (b) to prejudice or affect the continuity of the company;
- (c) to affect the property of the company;
- (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the company or any other person; or
- (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person.

(4) Upon the registration of a company under this section -

- (a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association, shall be deemed to be the memorandum of association of the company; and
 - (b) so much of its constitution as does not, by virtue of paragraph (a), comprise its memorandum of association, shall be deemed to be the articles of association of the company and shall be binding on the company and its members accordingly.
- (5) *Repealed.*

Prior approval for transfer to Samoa of a company incorporated outside Samoa

17.(1) A company incorporated as a company or corporation under the laws of any country other than Samoa or of any jurisdiction within such a country, may prior to applying for registration under section 16, request that such registration be approved in principle and upon such request and payment of the prescribed fee, the Registrar may if he is satisfied that the company or corporation is eligible for registration under section 16, issue a certificate confirming his approval to the company being so registered within a period of 12 months from the date of the certificate.

(2) The certificate of approval given by the Registrar under subsection (1) shall not relieve the company to whom it is issued from complying with the provisions of section 16 on a subsequent application for registration.

Requirements as to memorandum

18.(1) The memorandum of every international company other than a limited life international company (to which section 30 C shall apply in this regard) shall be printed and divided into numbered paragraphs and dated and shall state the following -

- (a) the name of the company;
- (b) whether the company is a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee;
- (c) the full name and address of the subscriber thereto or the full names and addresses of the subscribers thereto, as the case may be;
- (d) in relation to the share capital of the company, if any -
 - (i) where the company proposes to issue only par value shares, the amount of the share capital with which it is proposed to be registered and the division thereof into shares of a fixed amount;
 - (ii) where the company proposes to issue only no-par value shares, the number of shares; or
 - (iii) where the company proposes to issue both par value shares and no par value shares, the fixed value of the par value shares and the number of no par value shares;
- (e) in relation to a company limited by guarantee or a company limited by both shares and guarantee, that each guarantee member of the company undertakes to

contribute to the assets of the company in the event of its being wound up while he is a member such amount as may be required, not exceeding the amount specified in the memorandum., for the payment of the company's debts and liabilities contracted before he ceased to be a member and of the costs, charges and expenses of winding up and for any adjustment of the rights of contributories as between themselves;

- (f) that the subscriber or subscribers to the memorandum desire the formation of an international company and that on incorporation of a company limited by shares or limited by both shares and guarantee, shares of the number and class in the capital of the company set out are to be issued to the subscriber or the respective subscribers.

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

(3) *Repealed.*

(4) *Repealed.*

Liability of Members

18A.(1) An international company is a legal entity, considered in law a fictitious person, distinct from its members and with separate rights and liabilities. Save as may be specified by this Act or by contract, the members of an international company do not owe any duty, liability or obligation to the international company, any other member of the international company, any creditor of the international company or any other company related to the international company.

(2) In the case of a company limited by shares or by guarantee or both by shares and by guarantee a member is liable to the international company -

- (a) in the case of members who have given a guarantee, only to the extent to which that member has undertaken to contribute from time to time and in the event of its being wound up; and
- (b) in the case of members who are shareholders, only to the extent of any amount unpaid on the shares respectively held by them."

Companies Limited by Guarantee and Companies Limited Both by Shares and by Guarantee

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

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

- (3) The transfer of a guarantee shall be effected by notice in writing to the international company.
- (4) In the case of a company limited both by shares and by guarantee, nothing in this Act shall require a shareholder to also be a guarantee member of that international company or vice versa.
- (5) Subject to the articles and any contract to the contrary, a guarantee member may surrender his guarantee to an international company and following any such surrender made in writing, his liability shall cease absolutely after the date of such surrender.

Change of status

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

- (2) Any international company may change its status only if all of the following requirements are complied with;
- (a) the proposed change is specifically authorised by a special resolution of the members of the international company and is given effect to, as contemplated by subsection (3), within six months from the date of such resolution; and
 - (b) the directors make a statutory declaration which is lodged with the Registrar that
 - (i) the change of status will in their honest belief, not result in the international company thereby being incapable of meeting its obligations to its creditors as they fall due; and
 - (ii) the international company has complied with all the provisions of this Act (including the payment of any fees due to the Registrar); and
 - (iii) the memorandum and articles will be duly amended within at least three days to reflect the change of status.
 - (c) payment of the prescribed fee.
- (3) The change of status of an international company shall take effect upon the day upon which it files a copy of the amended memorandum and articles with the Registrar.
- (4) Where -
- (a) any member of an international company did not vote in favour of the members' special resolution to change the status of the international company; and
 - (b) the change of status may have the effect of increasing the liability of that member.

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

member may either -

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

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

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

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

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

Consequential Changes

18D. Any provisions of this Act referring or otherwise relating to shares, share certificates or share capital (whether in respect of their value, terms of payment issue or allotment amount or otherwise) shall, subject to the provisions of the Act apply in respect of a company limited by guarantee or a company limited by both shares and guarantee, subject to such modifications as may be necessary by reason of the fact that such a company may or may not have a share capital.

Alteration of memorandum

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

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

Registrar and the Registrar shall retain and register the copy of the alteration and the resolution.

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

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

DIVISION 2 - STATUS AND NAME

Powers of companies

20.(1) An international company shall, unless expressly excluded or modified by the memorandum or the articles, have all of the powers of a natural person including the powers set forth in Schedule 1 and such other powers as are set out in its memorandum or articles and this Act.

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

(3) Where the exercise by the directors of any power of the company -

- (a) does not advance the business of the company;
- (b) is not in the best or commercial interest of the company; or
- (c) advances or assists the business of some other person at the expense or to the detriment of the company;

such exercise shall be a valid act on behalf of the company if the directors honestly believe that the exercise of such power will not result in the company thereby being incapable of meeting its obligations to its creditors as they fall due, within the meaning of section 54B of this Act.

(4) Nothing in this section shall require an international company to list any of its powers in its memorandum or articles.

Pre-incorporation contracts

20A.(1) This section applies to -

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

(2) Notwithstanding any rule of law or equity, any contract to which this section applies, may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made. A contract so ratified shall, upon ratification, be valid and enforceable as if the company had

been a party to the contract when it was made.

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

(4) Notwithstanding any rule of law or equity, in any contract to which this section applies, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company

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

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

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

(6) Where a company after its incorporation does not ratify a contract to which this section applies, any party to that contract may apply to the Court for an order directing the company to return any property, whether real or personal, acquired pursuant to the contract to that party, or for any other relief in favour of that party respecting any such property, and the Court may, if it considers it just and equitable to do so, make any order or grant such relief as it thinks fit and whether or not an order has been made under subsection (5) of this section.

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

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

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

(10) In this section “contract” means any legally binding transaction.

Ultra virus transactions

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

execute or take such conveyance or transfer.

- (2) Any such lack of capacity or power may be asserted or relied upon only in -
- (a) proceedings against the international company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of company's property, by the holder of any of those debentures, or by a trustee company acting as trustee for the holders of those debentures, to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company; or
 - (b) any proceedings by the company or by any member of the company against the present or former officers of the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the international company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the setting aside and restraining of 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.

Names of companies

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

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

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

(2A) Notwithstanding the provisions of subsection (2), an international company may, in lieu of any of the words or abbreviations in subsection (2), have as part of its name any other words or popular abbreviations of those words in any language being any words or abbreviations which a trustee company

can satisfy the Registrar connotes the existence of a body corporate as distinct from any other person or entity and such words or abbreviation may appear at the beginning, the end or elsewhere in the name of the international company in accordance with common practice.

(2B) Any person or entity which carries on business under any name or title being any word or abbreviation referred to in subsections (2) or (2A) unless it is an international company incorporated or foreign company registered under this Act (or a domestic company or an overseas company registered under the Companies Act 1955) commits an offence against this Act.

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

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

- (a) the abbreviations “Corp.” or “Inc.” or “Ltd.” in lieu of the word “Corporation” or “Incorporated” or “Limited” as the case may be, contained in the name of the company;
- (b) the word “Corporation” or “Incorporated” or “Limited” in lieu of the abbreviation “Corp.” or “Inc.” or “Ltd.”, as the case may be, contained in the name of the company; or
- (c) the symbol “&” in lieu of the word “and” contained in the name of the company or the word “and” in lieu of the symbol “&” in the name of the company.

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

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

(5) If the Registrar considers that the application is made bona fide and is satisfied that the proposed name is a name by which the intended international company or the international company could be registered without contravention of subsection (1), he shall, upon payment of the prescribed fee, reserve the proposed name for a period of 3 months from the date of the lodging of the application.

(6) If, at any time, during the period for which a name is reserved, an application is lodged with the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may upon payment of the prescribed fee extend that period for a further period of 3 months.

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

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

Change of name

23.(1) An international company may by special resolution or where permitted by its Memorandum by a resolution of the directors and with the approval of the Registrar change its name to a name by which the company could be registered without contravention of section 22(1).

(2) If the name of an international company, whether through inadvertence or otherwise and whether originally or by change of name, is a name by which the international company could not be registered without contravention of section 22(1), the company may by special resolution change its name to a name by which the company can be registered without contravention of that section and, if the Registrar so directs, shall so change it within 30 days after the date of the direction or such longer period as the Registrar allows and if the company fails to comply with such direction, it shall commit an offence against this Act.

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

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

Articles of association

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

(2) Articles shall be -

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

Adoption of Table A

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

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

Alteration of articles

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

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

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

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

Effect of memorandum and articles

27.(1) Subject to this Act, the memorandum and articles shall when filed bind the international company and the members thereof, including the holders of share warrants, to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and articles.

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

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

Copies of memorandum and articles

28.(1) An international company on being so required by any member shall send to him a copy of the memorandum and of the articles subject to payment to the company of such amount (if any), not exceeding the amount prescribed by the Registrar, as the company requires.

(1A) The Registrar in respect of an international company incorporated or registered after the 1st day of February 1993 may, when so required by any person, make available for inspection or copying, in whole or in part, the articles and memorandum of any such international company and any alterations made thereto, which have been filed and registered, upon payment to the Registrar of such amount (if any) as the Registrar may determine.

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

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

indicated in ink.

(3) Where a resolution affects the articles of an international company, a copy of the articles shall not be issued by the company after the resolution was made unless a copy of the resolution is annexed to the copy of the articles.

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

Transactions and Branches 29.(1) Contracts

on behalf of an international company may be made as follows: -

- (a) a contract which if made by private persons would by law be required to be in writing under seal, may be made on behalf of the company either -
 - (i) in writing under the common seal of the company and signed by a director or by some other person appointed by the directors for the purpose:

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

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

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

(3) An international company may by writing under its common seal empower any person either generally or in respect of any specified matters as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of that company under seal, or, subject to subsection (5) under the appropriate seal of the company, shall bind the company and all persons dealing in good faith shall be entitled to presume the regular and proper execution of the deed, and to act accordingly.

(4) An international company if authorised by its articles may establish a branch in any part of the

world.

(5) An international company and any branch thereof may have for use in any place outside Samoa a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the name of that branch; that seal shall be known as the branch seal.

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

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

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

Persons having dealings with international companies

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

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

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

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

presumed to act in good faith unless the contrary is proven.

Prohibition against carrying on business when no members

30.(1) Subject to subsection (2), if at any time an international company has no members and carries on business for more than 6 months while it has no members, every officer, servant, employee or agent of that company during the time that it so carries on business after those 6 months who know that the company has no members shall be liable, and if more than one, jointly and severally, for the payment of the whole of the debts of the company contracted during the time that it so carried on business after those 6 months, and the company and every such officer, servant, employee or agent commits an offence against this Act if the company so carries on business after those 6 months; so long as debentures of the kind referred to in section 57(1)(d) or 57(3) are issued and not redeemed the company, shall be deemed, for the purposes of this section, to have one member.

(2) Subsection (1) shall not apply in respect of an officer, servant, employee or agent of an international company which has no members who is carrying on the business of the company after 6 months while it has no members, if the officer, servant, employee or agent is doing so by virtue of a direction of the Court or under the direction of an official liquidator appointed in respect of that company.

DIVISION 3 - LIMITED LIFE INTERNATIONAL COMPANIES

Registration

30A.(1) A trustee company may apply to incorporate or register an international company as a limited life international company by delivering to the Registrar an original and true copy of the memorandum and articles of organisation which have been subscribed to by the trustee company, which need not be a member of the limited life international company, or by the persons who will be the first members of the company.

(2) An application for registration as a limited life international company may also be made under subsection (1) at the same time that an application is made to register a company by way of continuance under section 16.

(3) A limited life international company shall have at least two members. A trustee company that subscribes to the memorandum of a limited life international company shall not be a member of that company unless it subscribes for shares in the limited life international company in accordance with section 30G(1).

(4) An application under subsection (1) must be accompanied by the prescribed application fee.

(5) Sections 14 and 15 shall not apply to the incorporation of a limited life international company.

Issue of Certificate

30B.(1) The Registrar, if satisfied that the company complies with the provisions of Division 3 of this Part shall register the company as a limited life international company.

- (2) On registering a company as a limited life international company the Registrar shall:
- (a) in the case of a company referred to in section 30A (1), issue a certificate of incorporation certifying that the company is incorporated and registered as a limited life international company; and
 - (b) in the case of a company referred to in section 30A(2), certify in the certificate of continuation issued pursuant to section 16 of the principal Act that the company is registered as a limited life international company.
- (3) The certificate confirming registration as a limited life international company shall be conclusive evidence that all the requirements of this Act in respect of incorporation or registration and of all matters precedent and incidental thereto have been complied with and that the limited life international company referred to therein has been legally incorporated and registered under this Act.

Memorandum

30C.(1) The memorandum of a limited life international company shall state the following:-

- (a) the name of the company;
- (b) the address within Samoa of the registered office of the company;
- (c) the purpose for which the company is being incorporated;
- (d) the name and address of the resident agent in Samoa;
- (e) the total amount of share capital which may be contributed to the company and the division thereof into shares of a fixed amount;
- (f) the period of its duration, which shall be fifty years from the date of issue of the certificate under section 30B(2) if no period is specifically stated in the memorandum;
- (g) the full name and address of the subscriber thereto or the full names and addresses of the subscribers thereto, as the case may be; and
- (h) that the subscriber or subscribers to the memorandum desire the formation of a limited life international company;

(2) Where the memorandum is subscribed by a trustee company it shall when registered bind the company and its members to the same extent as if each member had subscribed his name thereto and as if there were contained in the memorandum on the part of the member, his heirs, executors and administrators, a covenant to observe the provisions of the memorandum, subject to the provisions of this Act.

(3) Section 18(1) shall not apply to a limited life international company.

Powers 30D. A limited life international company

registered and existing under this Act shall have, in addition

to the powers granted under section 20 the powers set out in Schedule 3.

Articles of Organisation

30E.(1) The articles of organisation of a limited life international company shall:-

- (a) state if the management of the limited life international company is reserved exclusively to its members;
- (b) if the management of the limited life international company is not reserved exclusively to its members, state the extent to which, the management of the limited life international company is to be vested in a manager or managers, and if so shall set out the manner in which such manager or managers are to be appointed by the members;
- (c) state that, unless otherwise provided in the operating agreement, the members who are managers of the limited life international company must own at all times during the existence of the company:
 - (i) an aggregate interest of not less than 1% in the income, gain, loss, deduction, or credit of the limited life international company; and
 - (ii) an aggregate interest of not less than 1% in the aggregate of the paid up capital and reserves of the limited life international company;
- (d) state the right, if given, and terms upon which the remaining members of the limited life international company may continue the business upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited life international company;
- (e) state the right, if given, of the members to admit additional members, and the terms and conditions of the admission;
- (f) state that, unless otherwise provided in the operating agreement, a member of a limited life international company is prohibited from transferring or assigning any share or other interest in the limited life international company without the approval in writing of all other members of the limited life international company, and that a transferee or an assignee of any share or other interest of a member in the limited life international company may not become a member of the limited life international company unless such transfer or assignment is approved in writing by all the members of the limited life international company other than the member transferring or assigning his share, shares or other interest in the limited life international company;
- (g) state that the limited life international company is prohibited from issuing shares to bearer or shares warrants to bearer;
- (h) specify any other provision, not inconsistent with law, which the members elect to set out in the articles of organisation for the regulation of the internal affairs of the limited life international company.

(2) Where the articles are subscribed by a trustee company they shall when registered bind the company and its members to the same extent as if each member had subscribed his name thereto and as if

there were contained in the articles on the part of the member, his heirs, executors and administrators, a covenant to observe the provisions of the articles, subject to the provisions of this Act.

(3) Sections 24 and 25 shall not apply to a limited life international company.

Name

30F. The words “Limited Life International Company” or its abbreviations “LLC” or “L.L.C.”, “Ltd. Life Co.”, or “Limited Life International Co.” shall be included in the name of every limited life international company registered under the provisions of this Act.

Members

30G.(1) No share in a limited life international company incorporated under this Act shall be issued until the person subscribing for such share has paid the consideration due in respect of that share.

(2) Subject to any limitations or provisions to the contrary in the memorandum or articles of organisation, each share in a limited life international company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

(3) No persons shall become a member of a limited life international company until that persons name and address is entered as a member in the register of members in accordance with the provisions of this Act or the articles of organisation.

(4) Sections 68 and 69 shall not apply to a limited life international company.

(5) Neither the members of a limited life international company nor the managers of a limited life international company managed by a manager or managers are liable under a judgement, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited life international company.

Management

30H.(1) Management of the limited life international company shall be vested in its members, which unless otherwise provided in the articles of organisation or operating agreement, if any, shall be in proportion to their contribution to the capital of the limited life international company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members; however if provision is made for it in the articles of organisation, management of the limited life international company may be vested in a manger or managers who shall be elected by the members in the manner prescribed by the articles of organisation or operating agreement, if any, of the limited life international company. If the articles of organisation provide for the management of the limited life international company by a manager or managers, unless the articles of organisation or operating agreement, if any, expressly dispenses with or substitutes for the requirement of annual elections, the manager or managers shall be elected annually by the members in the manner provided in the articles of organisation or the operating agreement, if any. The manager or managers, or the person appointed by the manager or managers, shall also hold the offices and have the responsibilities accorded them by the members and set out in the articles of organisation or operating agreement, if any, of limited life international company.

(2) Where the articles of organisation of a limited life international company provide for management

of the company to be reserved to the members or for a manager or managers to be appointed the company shall be exempt from the requirements of sections 83 and 91.

Interest in Company

30I. The interest of all members in a limited life international company constitutes the personal estate of the member, and may be transferred or assigned as provided in the articles of organisation or operating agreement, if any. However if all of the other members of the limited life international company other than the member proposing to dispose of his or its interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited life international company or to become a member. The transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions, to which that member would otherwise be entitled.

Resident Agent

30J.(1) Every limited life international company shall appoint a resident agent who shall be a trustee company, an officer of a trustee company, or a wholly owned subsidiary of a trustee company. A resident agent shall be an agent for the limited life international company upon whom any process, notice or demand required or permitted by law to be served upon the company may be served.

(2) The first resident agent of a limited life international company shall be nominated in the memorandum and thereafter the members may by unanimous agreement remove and appoint a resident agent.

(3) The resident agent of a limited life international company shall be responsible for compliance by the limited life international company with the requirements of this Act in relation to the lodging of all documents with the Registrar, the maintenance of the company's records in Samoa and for dealing with communications addressed to the company at its registered office.

(4) Section 90 shall not apply to a limited life international company.

Renewal Fees

30K. Every limited life international company shall be liable to pay to the Registrar on the 30th day of November of each year following the year in which it is incorporated or registered the prescribed annual renewal fee.

Dissolution

30L.(1) A limited life international company incorporated or registered under this Division shall be dissolved upon the occurrence of any of the following events:-

(a) when the period fixed for the duration of the limited life international company shall expire;

(b) by the unanimous written agreement of all members of the limited life

international company;

- (c) subject to any contrary provisions in the articles of organisation, upon the redemption, repurchase or cancellation of all the shares of any member of the limited life international company;
- (d) upon the transfer of any share or other interest in the limited life international company in contravention of the articles of organisation; or
- (e) upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of any member or occurrence of any other event which terminates the continue membership of any member in the limited life international company, unless the business of the limited life international company is continued by the consent of all the remaining members within 90 days following the occurrence of any such event or pursuant to a right to do so stated in the articles of organisation or operating agreement of the limited life international company.

(2) Within fourteen days following the occurrence of any of the events specified in subsection (1) above, the limited life international company shall file a notice of dissolution in such form as shall be prescribed by the Registrar.

(3) Upon the occurrence of any of the events specified in subsection (1) above, the person named in the articles of organisation shall without further action become the liquidator or if the articles of organisation do not provide for such an appointment then the manager or managers shall without further action become the liquidator, failing which the Registrar shall appoint an official liquidator to be the liquidator of the company.

(4) The provisions of section 11(3) shall not apply to a limited life international company.

(5) The winding up of a limited life international company shall commence from the date of appointment of the liquidator. Section 142(3) shall apply to a limited life international company except for the words “not being a transfer made to or with the sanction of the liquidator, other than the transfer of a share warrant”.

(6) Within 120 days after the commencement of the winding up of a limited life international company, the liquidator shall determine the claims validly made against the company, and immediately thereafter the liquidator, subject to the retention of funds to meet the costs of the liquidation, shall pay such claims as are admissible against the company, repay capital contributions to members, and distribute the surplus, if any, to the members.

(7) Upon making the payments referred to in subsection (5), the liquidator shall file with the Registrar a certificate of completion of dissolution in such form as shall be prescribed by the Registrar. The Registrar shall endorse the certificate of completion of dissolution and thereupon the existence of the limited life international company shall cease.

(8) Section 185(2) shall apply to a limited life international company but the words “resident secretary” are deleted and substituted with the words “resident agent”.

(9) Section 188(1) shall apply to a limited life international company but the words “section 172” are deleted and substituted with the words “section 30L”.

(10) Sections 143, 169, 170, 171, 172, 186, and 188, subsections (3), (4) and (5) of the principal Act shall not apply to a limited life international company -

Saving

30M. The provisions of Division 3 of Part III are without prejudice to section 13(3) of the principal Act which provides that all international companies incorporated under this Act are companies limited by shares.

PART IV - Shares, Debentures and Charges

DIVISION 1 - SHARES

Restriction on inviting investments from public

31. *Repealed*

Return as to Allotments

32. *Repealed*

Calls and forfeiture

33.(1) An international company may

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
- (b) accept from any member the whole or any part of the amount remaining unpaid of 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;

(d) *Repealed*

(2) *Repealed*

Reserve liability

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

Issue and effect of bearer shares

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

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

(3) An international company may, unless its articles otherwise provide, upon the request of a holder of any bearer share redenominate that bearer share as a registered share. Upon the surrender of the certificate of the bearer share, the international company shall issue a new registered share certificate bearing the same number (if any) as the certificate so surrendered.

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

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

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

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

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

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

Issue and effect of share warrants to bearer

36.(1) An international company may, unless its articles otherwise provide, upon the request of a holder of any fully paid up registered or bearer share exchange a share certificate in respect of that registered or bearer share for a share warrant to bearer. Upon the surrender of the certificate of the registered or bearer share, the international company shall issue a share warrant bearing the same number (if any) as the certificate so surrendered. A share warrant shall constitute conclusive evidence of the title to the share specified in that share warrant.

(2) An international company may, unless its articles otherwise provide, upon the request of a holder of any share warrant exchange that share warrant for a share certificate in respect of any share. Upon the surrender of the share warrant the international company shall issue a share certificate in respect of the

registered share bearing the same number (if any) as the share warrant so surrendered.

(3) The holder of a share warrant issued by an international company shall be deemed not to be a member of that international company and, subject to subsection (4), shall not be entitled to exercise any of the rights or receive any of the benefits of membership of the international company unless and until such time as the share warrant is surrendered and exchanged for a share certificate pursuant to subsection (2).

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

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

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

(7) A share warrant issued to bearer by an international company may be transferred by delivery of the share warrant.

Particulars in register in relation to bearer shares

37.(1) Upon the issue of a bearer share or the redenomination of a registered share as a bearer share, the international company shall

- (a) if the person to whom the bearer share is issued was already a member of the company, 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 share in respect of which the bearer share is issued; and
- (b) enter in the register of members the following particulars:
 - (i) the fact of the issue of the bearer share or the redenomination of a registered share as a bearer share; and
 - (ii) the date of the issue of the bearer share or the redenomination of the registered share as a bearer share.

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

Particulars in register in relation to share warrants

38.(1) Upon the exchange of a share warrant in respect of any share, the international company shall -

- (a) if the person to whom the share warrant is issued was already a member of the company, 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 share warrant is issued; and

- (b) enter in the register of members the following particulars:
- (i) the fact of the issue of the share warrant;
 - (ii) the date of the issue of the share warrant;
 - (iii) a statement to the effect that all of the rights attaching to the share specified in the share warrant shall be exercisable by the holder, from time to time, of the share warrant in lieu of the person standing in the register of members as the owner of that share.

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

Effect on meetings

39. *Repealed*

Share premiums

40. Where an international company which is not licenced pursuant to the provisions of the International Insurance Act 1988 or the International Banking Act 2005 issues shares (having a par value) at a premium whether for cash or otherwise, such premium shall not be treated as if it were part of the paid up share capital of the company but shall constitute a freely distributable reserve.

Proceeds of issue of shares of no-par value

41. The proceeds of an issue of shares having no par value by an international company shall not be treated as if it were part of the paid up share capital of that company but shall constitute a freely distributable reserve of the company.

Effect of conversion of par value share capital into no-par value capital and vice versa

42. Where an international company converts all its ordinary or preference shares having a par value or both such ordinary and such preference shares, into shares without par value, the whole of the ordinary or preference share capital as the case may be, shall not be treated as if it were part of the paid-up share capital, of the company but shall constitute a freely distributable reserve of the company.

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

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

Samoa.

(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 regulations.

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

- (a) subject to the right of the company to redeem any of those shares at the price fixed by the articles for the redemption thereof or at the price fixed pursuant to powers 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;
- (e) having preference in respect of the assets of the company over any other class or classes of shares upon the voluntary or compulsory liquidation of the company;
- (f) having rights only to return of paid up capital or to return of paid up capital plus no more than a fixed proportion thereof upon a liquidation of the company;
- (g) convertible into shares of any other class or into shares of any series of classes: Provided that shares shall not be converted into a class having prior or superior rights or preferences as to dividends or distribution of assets upon liquidation over shares proposed to be converted unless the consent of all members holding shares having such prior or superior rights is obtained;
- (h) subject to forfeiture by the company in the circumstances or in the event provided in the articles or in terms of issue of the shares:

Provided --

- (i) that the articles shall not be altered to make shares subject to forfeiture which were not originally so issued without the holders thereof being given an opportunity to object thereto and, in the event of their so doing, any alteration to that effect shall be void; and
 - (ii) that a forfeiture or, where there have been previous forfeitures, the last forfeiture shall not be effective for any purpose if it by itself or in any combination with any other forfeiture results in the reduction of the number of members of the company to less than that permitted by this Act;
- (i) unless the articles provide to the contrary, on which interest is payable by the company to the holder at such rates and upon such terms and conditions as are fixed at the time of issue or by the articles: Provided that such interest shall not become due and payable by the company to the holder if the company has any liabilities actual or contingent other than liabilities for interest on shares and, upon a winding-up, there shall be deemed to be no liability on the company for such claims until all creditors and the costs of the winding-up have been met or

satisfied;

- (j) where the articles so permit and subject to the terms provided therein by way of gift and without receiving any valuable consideration and such shares may be deemed to be fully paid shares; shares issued by way of gift shall not for 3 months after the date of issue thereof be contained in the same certificate as other shares; and 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 3 months after such date of issue such certificate shall bear a notation clearly written thereon that such shares are liable to forfeiture under the provisions of this section within 3 months of the date of issue and no other note of or relating to the fact that such shares were issued without valuable consideration need be made upon the share certificate but a notification of such issue shall be made in the Minute Book of the company and in the register of members; and
- (k) fractional shares carrying the corresponding fractional liabilities, limitations, preference, privileges, qualifications, restrictions, rights and other attributes of a whole share or a class or series of shares.

(4) Where shares are issued by way of gift and without consideration -

- (a) they shall not within 3 months after the date of their issue be exchanged for share warrants issued to bearer; and
- (b) notices of such issue shall be given to every registered member and every debenture holder and if issued within 12 months after incorporation also to the subscribers to the memorandum;

if at any time within 3 months from the date of issue of such shares any of such

- (c) 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;

the total amount of the share issue shall be set by special resolution and by a transfer

- (d) made to capital by the company from profits or revenue reserves.

R

(5) *epealed*

(6) *Repealed*

Redeemable shares and the repurchase of shares

44.(1) An international company which has issued redeemable shares may, if its articles so provide, redeem those shares on condition that such redemption complies with the provisions of section 54A of this Act.

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

Statement of cancellation

45. *Repealed*

Dealing by a company in its own shares

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

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

(3) If this section is not complied with every officer of the international company in default commits an offence against this Act.

(4) Where -

- (a) any person is convicted of an offence under this section; and
- (b) the Court is satisfied that the international company has suffered loss or damage as a result of the act or omission that constitutes the offence, the Court may, in addition to imposing a penalty, order the convicted person to pay compensation to the international company of such amount as the Court specifies.

Cancellation of re-acquired shares by an international Company

47. An international company may at any time by resolution of its directors cancel all or any part of the shares of the company of any class re-acquired by it, other than redeemable shares redeemed or purchased.

Distribution from capital surplus of international company

48. *Repealed*

Power to pay certain commissions 49.

Repealed

Issue of shares of par value at a discount

50.(1) Subject to this section an international company may issue par value shares of the company of a class already issued at a discount.

(2) Subject to any provision to the contrary in the articles of an international company, no shares shall be issued at a discount while any share warrants or bearer shares for the international company remain unsurrendered.

(3) An application to issue shares at a discount shall be made to a trustee company and shall be accompanied by the names and addresses of all members together with notices addressed to those members notifying them of the proposed issue, and specifying the maximum rate of discount at which the shares are to be issued.

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

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

(6) Where any such application is made, the Registrar, may if, having regard to the provisions of subsections (2) and (3) of Section 49 and the circumstances of the case and any objections, he thinks proper so to do, approve the issue on such terms and conditions as he thinks fit.

Issue price of shares of no par value requiring special resolution

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

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

(3) *Repealed*

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

Alteration of share capital

52.(1) (a) An international company may, by special resolution, alter the conditions of its memorandum and articles in any one or more of the following ways --

- (i) increasing its share capital by the creation of new shares of such par value as it thinks expedient;
- (ii) increasing the number of its share having no-par value;
- (iii) where the international company has existing shares with a par value, adding to its capital shares having no-par value;
- (iv) where the international company has existing shares with no-par value,

adding to its capital shares having a par value.

- (b) increasing its share capital constituted by shares of no-par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;
- (c) consolidating and dividing all or any of its share capital into shares of larger amounts than its existing shares or consolidating and reducing the number of issued no par value shares;
- (d) increasing the number of its issued no par value shares without an increase of its stated capital;
- (e) subdividing its shares or any of them into shares of smaller amounts than is fixed by the memorandum and articles provided always that in the subdivision the proportion between the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the redeemed share is derived;
- (f) converting all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value, subject to the provisions of this Act:

Provided that an existing company may not so convert any share capital which is not fully paid up;

- (g) converting its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value, subject to the provisions of this Act;
- (h) cancelling 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 persons or which have been forfeited and diminishing the amount of the share capital by the amount of the shares so cancelled; and
- (i) redenominating the currency of any shares by the conversion of shares denominated in one currency to the same number of shares of another currency

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

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

(3) *Repealed*

(4) *Repealed*

Validation of shares improperly issued

53. Where an international company 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 company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Court may, upon application lodged with it by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances

it is just and equitable so to do, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both subject to such conditions, if any, as it may impose and upon such order being made and a copy thereof being lodged by the company or by such holder, mortgagee or creditor with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of issue or allotment thereof as varied by the conditions, if any, imposed by the Court.

Special resolution for reduction of share capital

54.(1) Subject to confirmation by the Registrar, an international company may, if so authorised by its articles, by special resolution, reduce its share capital in any way and, in particular, without limiting the generality of the foregoing may

- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up capital which is lost or unrepresented by available assets;
- (c) either with or without extinguishing or reducing liability on any of its shares repay any paid up share capital which is in excess of the needs of the company or which it is otherwise in the interests of the company as a whole to have paid off;

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

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

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

ascertained, an amount fixed by the Registrar.

- (3) Notwithstanding the provisions of subsection (2) the Registrar may, having regard to the circumstances of the case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.
- (4) All applications to the Registrar under the provisions of subsections (2) and (3) shall be lodged with the Registrar and the international company making such application shall bear the costs of any enquiry and advertisement directed by the Registrar under the provisions of those subsections.
- (5) The Registrar, if satisfied with respect to every creditor who under subsection (2) is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may confirm the reduction on such terms and conditions as he thinks fit and may require the international company to publish as the Registrar directs the reasons for reduction or such other information as the Registrar thinks expedient, and, if the Registrar thinks fit, the causes which led to the reduction.
- (6) A Registrar's decision made under subsection (5) shall show the amount of the share capital of the international company as altered by the decision, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the decision deemed to be paid up on each share.
- (7) A copy of the decision made by the Registrar confirming a resolution for reducing share capital shall be lodged by the international company with the Registrar together with the prescribed fee and on the filing of the copy of the decision the reduction of share capital confirmed by that decision shall take effect.
- (8) A certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of an international company is as stated in the order.
- (9) On the filing of the copy of a Registrar's decision the particulars shown in the decision pursuant to subsection (6) shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Registrar to be made in the name of the international company shall, in the case of any addition to the same, for such period as is specified in the decision of the Registrar, be deemed to be an alteration of the memorandum for the purposes of this Act.
- (10) A member, past or present, shall not be liable in respect of any share, to any call or contribution exceeding in amount the difference between the amount of the share as fixed by the decision and the amount paid, on the share, as the case may be. Where any creditor entitled to object to the reduction is not entered on the list of creditors, by reason of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, and after the reduction the international company is unable to pay the amount of his debt or claim within 1 year after the debt or claim becomes due and payable or 1 year after the date of reduction whichever is the later then -
- (a) every person who was a member of that international company at the date of the registration of the Registrar's decision for reduction shall be liable to contribute for the payment of that debt or claim to an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the date of the registration of the Registrar's decision for reduction; and
 - (b) if that international company is wound up by the Court on an application by any such creditor, then upon proof of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, the Court may settle a list of persons so liable to contribute, and make and enforce calls and orders on the

contributories in a winding-up, but nothing in this subsection

shall effect the rights of the contributories among themselves. (11) Any officer of any international company who -

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

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

Capital maintenance, dividends and other distributions

54A.(1) An international company may, if so authorised by its articles, make any distribution to members or reduce or extinguish the liability of its members in any way and, in particular, but without limiting the generality of the foregoing may:

- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liabilities on any of its shares, cancel paid up capital which is lost or unrepresented by available assets;
- (c) either with or without extinguishing or reducing liabilities on any of its shares, repay to the members any paid up share capital which is in excess of the needs of the company or which is otherwise in the interests of the company to repay; or
- (d) convert any amount of the capital of the company to debt obligations owed by the company to the holder of those shares (whether by repayment or by direct conversion to an instrument); and may, so far as is necessary, alter its memorandum by reducing the amount of its share capital and its shares accordingly.

Each such transaction is henceforth referred to in this section as a “capital reduction transaction”.

(2) Except insofar as this section otherwise provides, any capital reduction transaction shall be a valid act of the international company if, at the time of effecting that capital reduction transaction the directors have an honest belief that the transaction will not result in the company being incapable of meeting its obligations to creditors as they fall due.

(3) Any capital reduction transaction if it has the effect of returning assets to or reducing liabilities in respect of some but not all of the shareholders of the company (or to some but not all of the holders of any class of shares in the company) shall, except insofar as is effected in accordance with the rights of members as specified in the articles of the company, be deemed to be a variation of those rights to which the shareholders may object and the provisions of section 55 shall apply mutatis mutandis to such deemed variation.

(4) Any capital reduction transaction effected otherwise than in accordance with the provisions of

subsection (2) shall be void at the absolute discretion of a liquidator and any creditor of the company.

(5) Where an international company effects a capital reduction transaction, other than the payment of a dividend in accordance with subsection (6), there shall be lodged with the Registrar for filing within 42 days of its having effected that transaction a capital reduction notice.

(6) Notwithstanding anything to the contrary in this Act, an international company may pay dividends out of current or prior year profits (including any capital profits), any unrealised gains, or from any other reserve without the need to make good prior year losses (if any) and such dividends may be distributed in cash or any other form.

(7) If the provisions of this section are not complied with every officer of the international company who is in default commits an offence against this Act.

(8) Nothing in this section shall affect:

- (a) any transaction effected in accordance with sections 46 or 54 of this Act;
- (b) if the articles so provide, the redemption of any shares out of the proceeds of a fresh issue of shares;
- (c) any bonus issue;
- (d) the forfeiture of any shares in accordance with section 43 (j): Provided such forfeiture does not involve the distribution of any asset of the international company; or
- (e) the cancellation of shares or reduction of capital in any other manner permitted by this Act.

(9) Nothing in this section shall preclude an international company from further limiting whether by contract or otherwise, its ability to make distributions.

(10) Subsections (1), (2), (3), (4), (6), (7), (8) and (9) of this section shall not apply to -

- (a) banks licensed under the International Banking Act 2005; or
- (b) any international company licensed under the International Insurance Act 1988.

Debts to be taken into account in determining solvency

54B. Where this Act requires the directors of an international company to determine whether any act or omission shall result in the international company being incapable of meeting its obligations to its creditors as they fall due, the directors shall take into account -

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

Rights of holders of classes of shares

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

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

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

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

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

(6) The issue of a Table B Debenture by an international company shall be deemed to be a variation of the rights of shareholder to which the shareholders may object and the provisions of this section shall apply mutatis mutandis to such deemed variation.

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

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

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

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

DIVISION 2 - DEBENTURES

Division 2 of Part IV of the principal Act is hereby amended by omitting all references to the term “secured debenture” and substituting references to the term “Table B Debenture”.

Power to issue debentures

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

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

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

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

- (a) the holders of such debentures shall have a right and power to vote and to demand a poll and thereby to determine all those matters in respect of which the members had the right and power to vote and to demand a poll before those rights and powers of the members became suspended or modified in accordance with the terms of the Table B Debenture;
- (b) every holder of such debenture, or the trustee for any such holder, shall have one vote for each whole dollar, or its equivalent in any other currency, of the principal sum the subject of the debenture outstanding at the time when the votes are counted;
- (c) the holders of such debentures may cast their votes by proxy in writing without attending a meeting;
- (d) a 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 company may not be altered.

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

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

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

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

(h) the rate of interest, if any, per annum payable thereon.

(5) Here the provisions of this Act and of the articles of an international company which give the members of the company the right and power to vote and to demand a poll have been suspended or have otherwise been modified pursuant to the terms of a Table B debenture then (subject to there being no other unredeemed Table B debentures under the terms of which such provisions are to remain suspended) those provisions shall upon redemption of that Table B debenture resume full force and effect in respect of that company in the same manner and to the same extent as before those provisions were suspended or were modified. Where such provisions resume full force and effect in any other circumstances than in the absence of any provisions to the contrary in the articles or in any relevant Table B debenture they shall likewise resume full force and effect in the same manner and to the same extent as before those provisions were suspended or modified.

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

(7) *Repealed*

Company to maintain register of debentures

58.(1) Subject to the provisions of this section every international company which issues debentures shall keep and maintain -

- (a) a register of debenture at the registered office of the company in Samoa;
- (b) a copy of all the terms of Table B Debentures issued by the company with the register of holders of debentures at that registered office; and if the terms of a Table B debenture incorporate in whole or in part the provisions of Table B of Schedule 2 or terms provided for in the articles of association of the company or prescribed as being the form which may or shall be adopted in a particular case, the copy of the terms kept with the register may disclose such terms by reference to that Table or regulation or those articles.

(2) *Repealed*

(3) *Repealed*

(4) *Repealed*

(5) *Repealed*

(6) *Repealed*

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

(8) *Repealed*

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

(10) An international company may discontinue a branch register and thereupon all entries in that

register shall be transferred to some other branch register kept by the company or to the principal register.

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

(12) *Repealed*

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

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

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

(16) *Repealed*

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

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

within 1 month of the passing of the resolution the original security and the resolution for recording and any recording in respect of the conversion shall be deemed to be cancelled.

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

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

Perpetual debentures

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

(2) Subject to subsection (3), notwithstanding anything in any debenture or trust deed, the security for a debenture issued by an international company which is irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable forthwith or at such other time as the Court directs if, on the application of the trustee for the holder of the debenture or , where there is no trustee, on the application of the holder of the debenture, the Court is satisfied that -

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

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

Reissue of redeemed debentures

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

- (a) unless any provision to the contrary, whether express or implied, is contained in any contract entered into by the company; or

- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

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

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

DIVISION 3 - TITLE AND TRANSFERS

Nature of shares

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

Numbering of shares

62. *Repealed*

Certificate or warrant to be evidence of title

63.(1) A certificate under the seal of an international company or any branch thereof specifying any shares held by any member of the company shall be prima facie evidence of the title of the member to the shares.

(2) Every share certificate or share warrant shall be under the seal of the international company or a branch thereof and shall state -

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company in Samoa or, where the certificate is issued by a branch of the company, the address of that branch;
- (c) where the shares have a par value the nominal value and the extent to which the shares are paid up; and
- (d) the class of the shares;

(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 international company and every officer of the company who is in default commits an offence against this Act.

Company may have share seal

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

Loss or destruction of certificate

65.(1) Subject to subsection (2), where a certificate or other document of title of shares or debentures other than share warrants or bearer debentures, is lost or destroyed the international company issuing the shares or debentures shall, on payment of a fee prescribed by regulation, issue a duplicate certificate document in lieu thereof to the owner on his application accompanied by -

- (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;
- (b) an undertaking in writing that, if it is found or received by the owner, it will be returned to the company; and
- (c) such indemnity against loss in favour of the company and its officers as the company may require.

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

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

or, may require the applicant to do both of those things.

(3) In the case of 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.

Instruments of transfer

66.(1) Except in the case of share warrants a share warrant; or bearer debenture, an international company shall not register a transfer of shares or debentures unless a proper, instrument of transfer has been

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

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

(3) Bearer shares and share warrants shall be transferable in the manner described in sections 35 and 36, respectively.

(4) Bearer debentures shall, except in so far as the trust deed relating to, or the terms of issue of, or the debenture itself make other provision in that behalf, be transferable by delivery.

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

Official register of share warrants

67. *Repealed*

Registration of transfer at request of transferor

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

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

(2) If any person refuses or neglects to comply with the notice given under subsection (1) the transferor may lodge an application with the Registrar to issue a notice to that person to show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

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

Notice of refusal to register transfer

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

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

Certification of transfers

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

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

(3) For the purposes of this section -

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

Duties of company with respect to issue of certificate

71.(1) Other than such a transfer as the company is, for any reason, entitled to refuse to register and does not register, every international company, within 2 months after the allotment of any of its shares or debentures and within 1 month after the date on which a transfer of any of its shares or debentures is lodged shall 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 any international company on which a notice has been served requiring the company to make good any default in complying with the provisions of this section fails to make good the default within 21 days after the service of the notice, the Registrar may on the application of the person entitled to have the certificate or warrant for the shares or debentures delivered to him direct the company and every officer of the company to make good the default within such time as is specified in the direction, and the direction may provide that all costs and expenses of and incidental to the application shall be borne by the company and by any officer of the company in default in such proportions as the Registrar thinks fit.

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

DIVISION 4 - REGISTRATION OF CHARGES

Filing of charges

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

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

(1A) Where the instrument or a statement is not lodged with the Registrar in accordance with subsection (1), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, and without prejudice to any contract or obligations for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

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

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

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

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

- (a) the total amount secured by the whole series;
- (b) the date of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined.
- (c) a general description of the property charged; and
- (d) the names of the trustee, if any, for the debenture holders together with -
- (e) the instrument creating the charges; or
- (f) a copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy.

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

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

Filing of pre-existing charges

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

- (a) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of chargees or persons entitled to the benefit thereof; or
- (b) a copy of the charge, to be lodged with the Registrar for filing within 42 days after the date on which the acquisition is effected.

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

Filing of charges by foreign companies which become registered under this Act 74.(1) This

section applies to charges by foreign companies in respect of property situated in Samoa if:

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

subsequently registers under Part X;

- (2) In respect of such a charge:
- (a) the company or any other person interested in the charge may cause;
 - (i) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of chargees or persons entitled to the benefit thereof; or
 - (ii) a copy of the charge, to be lodged with the Registrar for filing within 42 days after the date on which the charge was created where the charge was created whilst the foreign company was registered under Part X, and within 42 days after the registration of the foreign company under Part X where the charge was created prior to registration under Part X; and
 - (b) the company shall give notice in writing to all other persons interested in the charge of the fact of the registration of the company under Part X of this Act, together with a copy of this section and such notice shall be given to such persons within 15 days of the registration of the company under Part X.

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

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

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

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

Negation of the rule in re Charge Card Services Limited

74A.(1) Notwithstanding any rule of law to the contrary, any charge or security given, or purported to be given, by any person (“the chargor”) in favour of another person (“the chargee”) where:

- (a) the charged property is or includes a debt due or to become due to the chargor from the chargee; and
- (b) which debt is situated in Samoa

shall be deemed to be a charge over an asset and shall be as valid and enforceable to the same extent as if

the charge or security had been given over that debt in favour of any other person.

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

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

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

- (a) any contractual, legal or equitable right of set off arising between the parties (including any right of a bank and the rules relating to matters of account between parties); or
- (b) any provision creating other rights, powers, obligations) or the imposition of restrictions on obligations between a debtor and a creditor; and, for the avoidance of doubt, nothing in this section shall be construed to require the giving of any charge or security by the parties to any contract or deed.

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

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

Register of charges to be kept by Registrar

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

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

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

(2) The Registrar shall upon payment of the prescribed fee 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.

Endorsement of certificate of registration on debentures

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

- (a) a copy of the certificate of filing under section 75(2); or
- (b) a statement that filing has been effected and the date of filing.

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

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

Filing of satisfaction and release of property from charge 77.(1)

Where, with respect to a registered charge created by an international company -

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

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

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

Extension of time and rectification of register of charges

78. The Registrar, on being satisfied that the omission to file a charge within the time required or that the omission or mis-statement of any particular with respect to any such charge or in any memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that, on other grounds, it is just and equitable to grant

relief, may, on application lodged by the international company responsible for the omission or mis-statement or any person interested and on such terms and conditions as seem to the Registrar just and expedient, direct that the time for filing be extended or that the omission or mis-statement be rectified.

Documents made outside Samoa

79.(1) 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 Samoa, be extended by 28 days or such further period as the Registrar may from time to time allow.

Application of Division

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

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

PART V - Management and Administration

DIVISION 1 - OFFICE AND NAME

Registered office of company

81.(1) Every international company shall have a registered office in Samoa, which office shall be the principal office of a trustee company.

(2) Notice of the situation of the registered office of every international company shall be given in the prescribed form to the Registrar at the time of the incorporation of the company.

(3) Notice of any change in the situation of the registered office of an international company shall be given in the prescribed form to the Registrar within 14 days of the change.

(4) Trustee companies shall display at their principal office in a conspicuous position and in letters easily legible the names of such international companies as have their registered office at their address.

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

Publication of name

82.(1) The name of an international company shall appear in legible characters on -

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

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

(2) *Repealed*

DIVISION 2 - DIRECTORS AND OFFICERS

Directors

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

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

(3) Every international company shall have at least one director, who may be a resident director, and any casual vacancy in directors may, so far as the articles do not otherwise provide, be filled by a person appointed by the continuing director or directors or, if there be none, by the Registrar on a request being made by a member of the company.

(4) Subject to any contrary provisions in the international company's articles a director may be a company or a corporation and such company or corporation may act by itself or through a nominee appointed in writing and may be appointed or act as a director of more than one other company.

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

(6) A resident director shall be entitled to vote upon the resolution of the board of directors without disclosing his interest as director of any other international company but subject to the provisions of section 88.

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

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

to be practiced by the company or by any of its members or directors or upon the company or any of its members.

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

(10) The fees of a resident director payable by an international company shall be paid to the trustee company which made available the officer for appointment in Samoa in such manner and at such times as shall be agreed between the trustee company and the company.

(11) *Repealed*

Restrictions on naming

84. A person shall not be named as a director or proposed director in the articles of a company, unless before the registration of the articles 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.

Qualification of director

85.(1) Every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within 2 months after his appointment or such shorter period as is fixed by the articles; and for the purposes of this section the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

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

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

(4) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification shares or if after so obtaining it he ceases at any time to hold his qualification shares.

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

Validity of acts of directors

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

Power to restrain certain persons from managing companies

87.(1) The Registrar may issue direction that a person who, in Samoa or elsewhere -

(a) has been convicted of an offence in connection with the promotion, formation or

management of a corporation or company;

- (b) has been convicted of any acts involving fraud or dishonesty;
- (c) is an undischarged bankrupt or insolvent,

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

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

Disclosure of interest in contracts, property, offices, etc.

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

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

(3) For the purpose of this section a resident director shall be deemed to be interested in all contracts or proposed contracts with any international company of which he is a director and to be exempt from any requirement of circulation of notice or declaration in writing; and an oral declaration noted in the minutes is deemed sufficient compliance with the provisions of subsection (1).

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

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

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

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

(6) Where the articles of an international company so require every director of that company who

holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director, shall declare at a meeting of the directors of the company or cause to be circulated in writing to the other directors the fact and the nature, character and extent of the conflict: Provided that the provisions of this subsection shall not apply to a resident director unless the Articles of the Company otherwise provide.

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

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

whether or not it has been already circulated in writing;

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

(9) Where:

- (a) any contract is entered into in contravention of the provisions of this section; and
- (b) any party to that contract cannot establish on the balance of probabilities that he did not have actual knowledge or suspect at the time of entering the contract that the contract was entered into by any other party in contravention of the provisions of this section, then the contract shall be voidable at the absolute discretion of the company as against that party and all of the profits earned or derived by that party from the contract shall be payable to the company together with such other compensation as a Court may think just in the circumstances.

(10) *Repealed*

Code for the establishment of liabilities of officers

89.(1) An officer of an international company shall at all times act for a proper purpose and honestly in what he believes are the best interests of the international company.

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

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

(4) Nothing in this section shall preclude -

- (a) the right of an international company to impose, in its articles or by contract, obligations and duties on its officers in addition to the obligations and duties imposed in this section;
- (b) the right of the members of an international company to ratify by special

resolution the conduct of the officers notwithstanding that any such conduct may contravene this section or the memorandum and articles; and

- (c) an international company entering into a contract of insurance or indemnity or any other similar contractual obligation with or for the benefit or any officer.

(5) Notwithstanding that the obligations and duties of the officers of an international company are owed to the company, the company and any other person affected by any breach of those duties and liabilities may commence any civil proceedings against the officer: Provided that, in the case of any proceedings commenced by any person other than the company. -

- (a) the Court is satisfied that a strong prima facie case exists against the officers; and
- (b) the person commencing the proceedings pays into Court such amount determined by the Court as security for the costs and expenses of any other party to the proceedings; and
- (c) any net financial benefit derived from such proceedings shall be payable to the company.

Limitation of liability of officers

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

- (a) be liable for any penalty under this Act other than where such penalty arises by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person;
- (b) incur any tortious liability arising otherwise than by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person, unless the articles of the company provide for such liability;
- (c) be liable for any breach of trust or other equitable obligation other than where the relevant person had actual knowledge of and knowingly assisted in such breach, unless the articles of the company provide for such liability;
- (d) in the absence of wilful misconduct wilful default or wilful neglect, incur any liability (whether tortious, contractual, equitable or otherwise) by reason only that the company incurs any debts or obligations or continues to carry on business at a time when the company is unable to meet its obligations to its creditors as they fall due.

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

(3) For the purposes of this section “relevant person” means

- (a) a resident director;

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

Secretary and agents

90.(1) Every international company shall appoint a secretary. The secretary may be a resident secretary. More than one secretary may be appointed and if a resident secretary is appointed there may be additional secretaries that are not resident secretaries. Any international company that does not appoint a resident secretary shall appoint a resident agent.

(2) Secretaries, including resident secretaries, and resident agents may be a company or corporation.

(3) When requested in writing by an international company to make available a resident secretary or a resident agent, a trustee company shall either accept appointment as resident secretary or resident agent, as the case may be, of that company or make available for appointment an officer of the trustee company or a wholly owned subsidiary thereof.

(4) No person shall act or be appointed as a resident secretary or a resident agent other than a trustee company, an officer of a trustee company, or a wholly owned subsidiary thereof pursuant to subsection (3).

(5) Subject to subsection (6), the resident secretary of an international company or, in the case where no resident secretary is appointed, the secretary shall be responsible for compliance by the international company with the requirements of this Act in relation to the lodging of all documents with the Registrar, the maintenance of the company's record and dealing with the communications addressed to the company at its registered office or elsewhere. A resident agent shall also be responsible for dealing with communications addressed to the company at its registered office.

(6) An officer of a trustee company appointed pursuant to subsection (3) shall be entitled of his own motion to obtain the assistance of the trustee company of which he is an officer or a barrister or a solicitor in the interpretation of documents and shall be entitled by himself or his agent to have access to such information as is required to make and complete the same and to furnish such information relating to the affairs of the company to the trustee company or a barrister or a solicitor for that purpose.

(7) An international company shall forthwith pay any costs, charges and expenses incurred on its behalf by the resident secretary or the resident agent, as the case may be, in relation to any matters to be done under this Act.

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

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

Register of directors and secretaries

91.(1) Every international company shall keep at its registered office in Samoa, a register of its directors, and secretaries.

(2) The register shall contain with respect to each director, 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 or in the case of a company, the company's full name, the address of its registered office and the names of its authorised nominees and representatives in Samoa, if any.

(3) The register shall contain with respect to each secretary, 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 or in the case of a company, the full name of the company, the address of its registered office and the names of its authorised nominees and representatives in Samoa. if any.

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

(5) An international company to which this subsection applies shall lodge with the Registrar -

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

(5A) Subsection (5) shall apply only to international companies that have so elected by notice in writing to the Registrar and have not rescinded that election by subsequent notice in writing to the Registrar; and

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

(7) A certificate of the Registrar stating that from any return lodged with the Registrar pursuant to this section it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified international company to which this subsection applies shall, in all Courts and by all persons having power to take evidence of the facts stated therein and 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

Annual general meeting

92.(1) Every international company, shall at such times as are in this section prescribed, in addition to any other meetings hold in each calendar year a meeting to be called and described in the notice calling such meeting as the Annual General Meeting of the company and that meeting shall be held -

- (a) in the case of the first such meeting, within a period of 18 months after the date of the incorporation of the company concerned; and
- (b) thereafter -
 - (i) Within not more than 6 months after the end of every ensuing financial year of the company; or
 - (ii) within not more than 15 months after the legally due date of the last preceding such meeting of that company whichever is the later of the two dates.

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

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

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

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

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

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

- (a) hold any particular annual general meeting if all members entitled to attend that meeting agree thereto in writing, and in such event a resolution in writing

dealing with -

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

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

Convening of extraordinary general meetings on requisition

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

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

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

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

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

Calling of meetings

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

the company.

(2) A meeting of an international company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days 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), be deemed to be duly called if it is so agreed -

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

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

(d) In the case of members holding bearer shares, notice shall be given or deemed to have been given, if it is given in the manner specified in the articles, or if the articles do not make provisions for such notice, then -

- (i) where the member has advised the company of an address for service of notice, notice shall be given or deemed to have been given, if it is posted to the member at that address, or
- (ii) where the member has not advised the company of an address for service of notice, notice shall be given or deemed to have been given, if it is published in a newspaper circulated in Samoa or in the place where the company has its principal office.

(4A) (a) So far as the articles of an international company do not otherwise provide, members holding bearer shares shall be given sufficient notice of meetings of members to allow them a reasonable opportunity to take action to secure or exercise the right or privilege which is the subject of the notice.

(b) For the purposes of this subsection, what constitutes sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

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

(6) Anything that may be done by an international company by resolution or special resolution passed at a meeting of that company may, subject to any special provisions in that behalf in the articles of the company, be done without a meeting and without any previous notice of the resolution being required, by means of a resolution in writing signed by not less than three fourths of such members as are entitled to vote thereon and such resolution shall be deemed as valid as if passed at a meeting duly held in accordance with the Act and with the articles of that company. Any such resolution may be contained in the one instrument or in several instruments in like form.

Articles as to right to demand a poll

95.(1) Any provision contained in the articles of an international company shall be void in so far as it would have the effect -

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

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- (i) by not less than 5 members having the right to vote at the meeting; or
- (ii) by a member or members representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or

of requiring the instrument appointing a proxy or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy to be received by the company or any other person more than 4 days before a meeting or adjourned meeting in order that the appointment may be effective thereat.

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

(c)

Quorum, chairman voting, etc. at meeting

96.(1) So far as the articles of an international company do not make other provisions in that behalf, where a company has more than one member and two or more members are present, the members of the company shall be a quorum, and at a meeting -

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

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

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

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

particular meeting or at all meetings of any creditors of the company,
and a person so authorised shall, in accordance with his authority and until his authority is revoked by the

company, be entitled to exercise the same powers on behalf of the company as the company could exercise if it were an individual member, creditor or holder of debentures of the company.

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

Proxies

97.(1) A member of an international company entitled to attend and vote at a meeting of the company or at a meeting of any class of member of the company may -

- (a) in accordance with the articles of the company;
- (b) *Repealed*

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 so appointed shall have the same right as a member to speak at the meeting.

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

Power of Registrar to direct meetings to be called

98.(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, on an application lodged on behalf of any director or of any member who would be entitled to vote at the meeting, direct a meeting to be called, held and conducted in such manner as the Registrar thinks fit, and may give such ancillary or consequential directions as he thinks expedient.

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

Special resolution

99.(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 21 days notice specifying the intention to propose the

resolution as a special resolution has been duly given.

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

(3) At any meeting at which a special resolution is submitted, a declaration of the chairman, 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.

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

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

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

(7) If the articles of an international company 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).

Resolution requiring special notice

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

Filing of copies of certain resolution and agreements

101. As amended by the International Companies Amendment Act 1991.

Resolution at adjourned meetings

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

Minutes of proceedings

103.(1) Every international company shall cause-

- (a) minutes of all proceedings of general meetings and of proceedings of its directors to be entered in books kept for that purpose; and
 - (b) those minutes to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting or by one of the directors who was a party to the proceedings.
- (2) Any minute so entered that purports to be signed as provided in subsection (1) shall be prima facie evidence of the proceedings to which it relates.
- (3) The minute books of an international company shall be kept at the registered office of the company or such other place as the directors determine. Where the minute books are not kept at the registered office any person entitled to inspect such minute books may apply to the Registrar for an order that a copy of such minute books be made available at the registered office and in the event of the Registrar so ordering the company shall comply with the order within 28 days of receiving notice of the order.
- (4) Where minutes have been so entered and signed, then until the contrary is proved-
 - (a) the meeting shall be deemed to have been duly held and convened;
 - (b) all proceedings recorded as having taken place at the meeting shall be deemed to have been duly had; and
 - (c) all appointments of officers or liquidators recorded as having been made at the meeting shall be deemed to be valid.
- (5) Where the articles permit a resolution to be passed otherwise than at a meeting if assented to in writing by the person specified in the articles, the document containing such assent shall be entered in the minute book.
- (6) If default is made by an international company in complying with this section, the company and every officer of the company who is in default commits an offence against this Act.

Inspection of minute book

104.(1) Subject to such reasonable restrictions as the Registrar may approve, the books containing the minutes of proceedings of any meetings of an international company kept by the company at its registered office in Samoa and elsewhere, and the minutes of proceedings of any meeting of members, shall be open for inspection by any member without charge.

(2) Any member of an international company shall be entitled to be furnished, within 14 days after he has made a request in writing in that behalf to the company, with a copy of any minute of proceedings at a

general meeting at a charge not exceeding the amount prescribed from time to time by the Registrar.

(3) If any copy required under this section is not so furnished by an international company, the company and every officer of the company who is in default commits an offence against this Act.

DIVISION 4 - REGISTER OF MEMBERS

Register and index of members 105.(1) Every

international company shall keep a register of its members and enter therein -

- (a) the name and addresses of the members;
- (b) the date on which any person was entered in the register as a member;
- (c) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member;
- (d) in relation to a company limited by shares or a company limited by both shares and guarantee;
 - (i) a statement of the shares held by each member, distinguishing each share by its number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member and
 - (ii) the date of every allotment of shares to members and the number of shares comprised in each allotment;
- (e) in relation to a company limited by guarantee or a company limited by both shares and guarantee, a statement of the amount specified in the memorandum which each member has undertaken to contribute to the assets of the company in the event of its being wound up.
- (f) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer, and with respect to each certificate of shares issued to bearer,
 - (i) the identifying number of the certificate
 - (ii) the class or series of shares issued to bearer specified therein; and
 - (iii) the date of issue of the certificate.

(2) The register of members shall be prima facie evidence of any matter inserted therein as required or authorised by this Act.

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

Where register to be kept

106. The register of members of an international company shall be kept at the registered office of the company or such other place as the directors determine. Where the register of members is not kept at the registered office any person entitled to inspect such register may apply to the Registrar for an order that a copy of the register be made available at the registered office and in the event of the Registrar so ordering the company shall comply with the order within 28 days of receiving notice of the order.

Inspection and closing of register

107.(1) An international company may, on giving not less than 21 days notice by advertisement in such manner as the articles provide or in default of such provision in such manner as the Registrar may approve, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any year.

(2) The register shall be open to the inspection of any member for the purposes of inspection of the particulars of that member's shareholding contained therein but no member shall be entitled to inspect the particulars of any other member or of the shareholding of that other member without the consent in writing of that other member first had and obtained (or in the case of any company making a public offering of any debt or equity security as may be provided for in the articles of that international company). Any inspection by a member shall be without charge.

(3) Subject to the provisions of subsection (2), any member of an international company may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and where applicable amounts paid on shares, or payment in advance of the amount prescribed from time to time by the Registrar or such lesser sum as the company requires for every 200 words or part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of 30 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

(4) If any copy so requested of an international company is not sent within the period specified in subsection (3), the company and every officer of the company who is in default commits an offence against this Act.

Consequences of default by agent 108.

As amended by the International Companies Amendment Act 1991.

Power of Registrar to rectify register

109.(1) If, in relation to an international company -

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

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

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

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

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

110.(1) A trustee, executor or administrator of an estate of a deceased person who was registered in a register or branch register kept in Samoa as the holder of a share in an international company may become registered as the holder of the share in his capacity as trustee, executor or administrator of the estate, and shall, in respect of that share, enjoy the same rights and be subject to the same liabilities as the deceased person while the deceased person was registered as holder of the share.

(2) A trustee, executor or administrator of an estate of a deceased person who was equitably entitled to a share in an international company, being a share registered in a register or branch register kept in Samoa may with the consent of the company and of the registered holder of the share, become registered as the holder of that share in his capacity as trustee, executor or administrator of the estate and shall, in respect of the share, enjoy the same rights and be subject to the same liabilities as the deceased person would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in an international company registered in a register kept in Samoa or in a branch register and held by a trustee in respect of a particular trust may, with the consent of the company, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

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

Branch registers

111.(1) An international company may cause to be kept in any place outside of Samoa a branch register of members.

(2) A branch register shall be kept in the same manner in which the principal register is, by this Act, required to be kept.

(3) The shares registered in a branch register may be distinguished from shares registered in the principal register, and any dealing with a share on a branch register shall be noted in that register.

(4) An international company which keeps a branch register outside of Samoa may discontinue the branch register and thereupon all entries in that register shall be transferred to some other branch register

kept by the company or to the principal register.

(5) If by virtue of the law in force in any other country, a company incorporated under that law keeps in Samoa a branch register of its members, the provisions of this Act relating to inspection, place of keeping and rectification of the register of members shall apply to and in relation to any such register kept in Samoa as they apply to and in relation to the registers of international companies under this Act and thereupon those provisions shall apply accordingly.

DIVISION 5 - ANNUAL RETURN

Annual Return 112. As

amended by the International Companies Amendment Act 1991.

PART VI - Accounts and Audit

DIVISION 1 - ACCOUNTS

Accounts to be kept

113.(1) An international company shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

(2) The accounts of an international company shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by any director.

(3) The Registrar may in any particular case direct that the accounting and other records of an international company be open to inspection by a registered company auditor acting for a director, but only upon an undertaking in writing given to the Registrar that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(4) Any person who, being a director of an international company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, section 114 and section 115 or, a resident director has by his own wilful act been the cause of any default by the company thereunder commits an offence against this Act.

Accounts to be laid before meeting or circulated

114.(1) At any meeting of an international company at which a member so requires, the directors shall either lay before the meeting a profit and loss account of the company and a balance sheet thereof made up to date not more than 12 months before the date of the meeting, or shall, at an adjournment of the meeting held not later than 2 months thereafter, lay before such adjourned meeting a profit and loss account and balance sheet made up to the original date of the meeting, or such other more remote date not being more than 6 months before the original date of the meeting as the Registrar upon application lodged with him

may fix.

(2) In the case of an international company the articles of which 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; and

(b) by notice in writing served at the registered office of the company in Samoa.

require that a balance sheet and profit and loss account made up to a date not earlier than 2 months before the date of a resolution declaring a dividend be circulated to members and thereupon no such resolution shall be passed until 21 days after circulation thereof.

(3) A balance sheet or profit and loss account of an international company laid before a meeting or sent to members shall be accompanied by all documents required by this Act to be attached thereto.

(4) A balance sheet under this section shall state, in addition to any other information included therein

(a) the share capital constituted by -

(a) shares having a par value; and

(b) shares having no par value.

(i) the classes of shares, their respective number and nominal value, into which the share capital constituted by shares having a par value have been divided and in the case of shares of no par value the number of such shares;

(ii) the number of the issued shares and the amount of the issued share capital in respect of each class of shares;

(iii) the stated capital account, setting out the preliminary expenses, commission and expenses of issue of no par value shares charged against that account during the accounting period.

Statement of accounts

115. The accounts of an international company may be prepared in accordance with such generally accepted accounting principles as may be directed by the members in general meeting or as may be provided for in the articles, or, in the absence of such direction or provision, as may be determined by the directors.

DIVISION 2 - AUDIT

Auditor to be appointed 116.(1) Subject to Section 117, the

directors of an international company shall within 90 days of its

incorporation, appoint a registered company auditor to be the auditor of that company and that auditor shall hold office until the expiration of the audit period expiring next after 18 months from the time of incorporation.

(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 an international company without his prior written consent.

(4) An international company shall, whenever it appoints an auditor, lodge with the Registrar within 30 days of the appointment a notice thereof in the prescribed form accompanied by the auditor's written consent.

Auditor need not be appointed in certain circumstances

117. An international company need not appoint an auditor of the company if:-

- (a) the articles of the company so provide; or
- (b) all the members of the company agree in writing that such an appointment should not be made; or
- (c) at each annual general meeting of the company all the members present in person or by proxy resolve that such an appointment should not be made.

Appointment and removal of auditors

118.(1) Subject to the provisions of section 116 and 117, an international company shall appoint a registered company auditor to be the auditor of the company for such period as the company may determine upon the previous auditor ceasing to hold office.

(2) An international company may, at a general meeting of which notice has been given to the auditor not less than 28 days before the date of the meeting, remove an auditor from office. Subject to section 117, where an auditor is removed, the international company shall at the meeting at which the auditor is removed or at a general meeting held within one month thereafter, appoint a registered company auditor to take the place of the auditor so removed.

Auditor ceasing to be registered

119.(1) Unless the Registrar otherwise directs, or the directors otherwise resolve, if an auditor ceases to be a registered company auditor, he shall continue to hold office as auditor of an international company until completion of the audit work for the audit period during which he ceased to be a registered company auditor.

(2) Where an auditor ceases to be registered and does not continue in office as auditor of an international company as aforesaid, the company shall immediately appoint another registered company auditor at a fee to be fixed by agreement between that other auditor and the directors and that other auditor shall be the auditor of the company for the purposes of this Act for the period then current and, subject to making proper appraisal and review of the work of the auditor ceasing to be registered, such other auditor

shall be entitled to use and rely upon the work of the first-mentioned auditor done up to the time of the appointment of the new auditor.

(3) For the purpose of subsection (2) it is hereby declared that it is an implied term of every contract between an international company and its auditor that the auditor shall make available to another auditor taking office either in lieu of or in addition to the first-mentioned auditor during the course of an audit period all working papers relating to the affairs of the company made and kept by the first-mentioned auditor during his tenure of office.

Term of office when auditor ceases to be registered

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

Partners of auditors

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

Remuneration of auditor

122. The fees and expenses of an auditor of an international company may be fixed by the directors unless the auditor requires such fees and expenses to be fixed by a resolution of the members of the company.

Auditor may attend meetings

123. An auditor of an international company shall be entitled to attend and address all meetings of members of the company.

Auditor to audit

124.(1) An auditor of an international company shall carry out an audit in respect thereof in each audit period.

(2) Every auditor shall report to the members as to his audit and matters disclosed thereby and as to every balance sheet and profit and loss account and as to any other accounts put before the members.

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

Powers of auditors

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

Powers, duties and obligations of auditors

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

PART VII - Arrangements and Reconstructions

Power to compromise with creditors and members 127.(1) In this section, except in so far as the context or subject matter otherwise indicates or requires-"arrangement" includes a reorganisation of the share capital of an international company by the consolidation of shares of different classes or by the division of different classes or by both those methods;

"company" means any international company liable to be wound up under this Act.

(2) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them or between the company and its members or any class of them the Registrar on an application being lodged by the company or by any creditor or member of the company, or, in the case of a company being wound up, by the liquidator, accompanied by the prescribed fee may direct a meeting of the creditors or a class of creditors or of members of the company or a class of members to be summoned in such manner as he may direct.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting agrees to any compromise or arrangement, the compromise or arrangement if approved by direction of the Registrar or, in the case of companies being wound up compulsorily, by the Court, shall be binding on all the creditors or class of creditors or on all the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Registrar of the Court, as the case may be, may grant his or its approval to a compromise or arrangement subject to such alterations or conditions as is thought fit.

(5) An order or direction under subsection (3) shall have no effect until an office copy of the order or direction is lodged with the Registrar and the prescribed fee paid and, upon being so lodged, the order or direction 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 or direction.

(6) A copy of any order or direction made under subsection (3) shall be annexed to every copy of the memorandum and articles of the company issued after the order or direction has been made.

(7) Where any such compromise or arrangement in respect of an international company for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies has been proposed, the directors of the company--

- (a) if a meeting of the members of the company by resolution so directs, shall instruct such experts or a trustee company or both as are named in the resolution to report on the proposal and forward their report or reports to the directors as soon as may be; and
- (b) shall make such report or reports available at the registered office of the company in Samoa for inspection by the shareholders and creditors of the company at least 14 days before the date of any meeting ordered by the Registrar to be summoned as provided in subsection (2).

(8) An international company which defaults in complying with subsection (6) or (7) and every officer of a company who is in default commits an offence against this Act.

(9) Where no other has been made or resolution passed for the winding-up of a company and any such compromise or arrangement as is referred to in subsection (2) has been proposed between the company and its creditors, or any class of such creditors, the Registrar, in addition to any of his other powers, on an application lodged by the company or by any member or creditor of the company may request the Court to restrain further proceedings in any action or proceeding against the company except by special leave of the Court in which the action or proceeding is pending and subject to such terms as the Court imposes.

Information as to compromise with creditors and members 128.(1) Where a

meeting is summoned in respect of an international company under section 127 -

- (a) with every notice summoning the meeting which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating the material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interest of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement, there shall be included either such statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such statement.

(2) Where the compromise or arrangement affects the rights of debenture holders the statement shall give the like explanation with respect to a trustee company when the trustee company is acting as trustee for the debenture holders as, under subsection (1), a statement is required to be given with respect to the directors.

(3) Where a notice given by an international company by advertisement includes a notification that copies of such statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with

a copy of the statement.

(4) Each director of an international company and the trustee company on behalf of the debenture holders shall give notice to the company of such matters relating to himself and itself as may be necessary for the purposes of this section.

(5) Where default is made by an international company in complying with any requirements of this section, the company and every officer of the company who is in default commits an offence against this Act.

(6) For the purpose of subsection (5) a liquidator of an international company and the trustee company acting on behalf of debenture holders shall be deemed to be officers of the company.

(7) Notwithstanding the provisions of subsection (5) a person shall not be liable under that subsection if he shows that the default was due to the refusal of any director or trustee company to supply the necessary particulars as to his or its interest.

Provisions for facilitating reconstruction and amalgamation of companies

129.(1) In this section, except in so far as the context or subject matter otherwise indicates or requires, "property" includes property rights and powers of every description.

(2) Where an application is lodged with the Registrar or made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Registrar or the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any international company or companies or the amalgamation of any 2 or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme, in this section referred to as the "transferor company", is to be transferred to another company, in this section referred to as the "transferee company" the Registrar or the Court may either by direction or order approve the compromise or arrangement or by any subsequent direction or order provide for all or any of the following matters:-

- (a) the transfer to the transferee company of the whole or any part or the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the adjournment or continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding-up, of the transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the Registrar or the Court directs, dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(3) Where an order or direction made under this section provides for the transfer of property or

liabilities, then by virtue of the order or direction that property shall be transferred to and vest in and those liabilities shall be transferred to and become liabilities of the transferee company free in the lease of any particular property if the order of directions so provides, from any charge which is by virtue of the compromise of arrangement to cease to have effect.

(4) Where an order or direction is made under this section, an international company in relation to which the order or direction is made shall lodge an office copy thereof with the Registrar and pay the prescribed fee within 14 days after the making of the order or direction and every company which makes default in complying with this subsection and every officer of the company who is in default commits an offence against this Act.

Takeover Offers

130. Regulations may be made for regulating takeover offers.

PART VIII - Receivers and Managers

Qualification for appointment as receiver

131.(1) In this Part "receiver" includes a receiver of the property of an international company or any part thereof or of the property of a foreign company registered in Samoa 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, an international company shall not be appointed a receiver unless it is an official liquidator.

Directions and liability

132.(1) A receiver appointed under the powers contained in any instrument may lodge an application accompanied by the prescribed fee with the Registrar for directions in relation to any matter arising in connection with the performance of his functions.

(2) A receiver shall be personally liable in any contract entered into by him in the performance of his functions except in so far as the contract otherwise provides and shall be entitled in respect of that liability to indemnity out of the assets of the company; 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.

Notification of appointment of receiver

133.(1) If any person obtains an order for the appointment of a receiver, or appoints such a receiver under any powers contained in any instrument he shall, within 14 days after he has obtained the order or made the appointment, lodge notice of the fact with the Registrar.

(2) Where any person appointed receiver under the powers contained in any instrument ceases to act

as such he shall within 21 days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section commits an offence against this Act.

Statement that receiver appointed

134.(1) Where a receiver has been appointed in respect of an international company, every invoice, order for goods or business letter issued by or on behalf of the company by the receiver or liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement immediately following the name of the company that a receiver has been appointed.

(2) If default is made by an international company in complying with this section, the company and every officer and every liquidator of the company or receiver who knowingly and wilfully authorises or permits the default commits an offence against this Act.

Provisions as to information where receiver appointed

135.(1) Where a receiver is appointed in respect of an international company -

- (a) he shall forthwith send notice to the company of his appointment;
- (b) there shall within 1 month after receipt of the notice, or such longer period as may be allowed by the Registrar or by the receiver, be made out and submitted to the receiver in accordance with the provisions of section 136 a statement in the prescribed form as to the affairs of the company; and
- (c) he shall within 1 month after receipt of the statement--
 - (i) lodge with the Registrar a copy of the statement and of any comments he sees fit to make;
 - (ii) send to the company a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and
 - (iii) where he is appointed by or on behalf of holders of debentures of the company, send to the trustees, if any, for those holders a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver or in the case of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before that subsection has been fully complied with, the references in paragraph (b) and (c) thereof to the receiver shall include references to his successor.

Special provisions as to statements made to receiver

136.(1) The statement as to the affairs of an international company required by section 135 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets debts and liabilities, the names and addresses of its directors, 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, by regulation.

(2) The statement as to the affairs of an international company shall be submitted by, and be verified by statutory declaration of, one or more persons who were at the date of the receiver's appointment the directors of the company or by such of the persons hereafter in this section mentioned as the receiver may require to submit and verify the statement, that is to say -

- (a) persons who are or have been officers;
- (b) persons who have taken part in the formation of the company at any time within 1 year before the date of the receiver's appointment;
- (c) persons who are in the employment of the company or who have been in the employment of the company within that year, and in the opinion of the receiver are capable of giving the information required;
- (d) persons who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making a statement and statutory declaration shall be allowed and shall be paid by the receiver, or his successor, out of his receipts such costs and expenses incurred in and about the preparation and making of the statement and statutory declaration as the receiver, or his successor, may consider reasonable subject to an appeal to the Registrar.

(4) Any person who defaults in complying with the requirements of this section, commits an offence against this Act.

Lodging of accounts by receivers

137.(1) Every receiver shall -

- (a) within 1 month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within 1 month after he ceases to act as receiver lodge with the Registrar a detailed account in the prescribed form showing-
 - (i) his receipts and his payments during each period of 6 months, or where he ceases to act as receiver during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing,
 - (ii) the aggregate amount of both receipts and payments during all preceding periods since his appointment; and
 - (iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment in the case of the first account, and at the expiration of every 6 months after 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 company which are subject to that instrument; and
- (b) before lodging such account verify by statutory declaration accounts and

statements referred to therein.

(2) The Registrar may of his own motion or on the application of an international company or a creditor cause the accounts to be audited by a registered company auditor appointed by the Registrar and for the purposes of the audit the receiver shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books kept by the receiver and any document or other record relating thereto.

(3) The Registrar may make a direction for the payment of the costs of an audit ordered by him and, where he causes the accounts to be audited upon the request of the company or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

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

138. As amended by the International Companies Amendment Act 1991.

PART IX - Winding up

DIVISION 1 - PRELIMINARY

Modes of winding-up

139.(1) An international company may be wound up either,

- (a) Compulsorily; or
- (b) Voluntarily.

(2) Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding-up, apply to the winding-up of a company in either of those modes.

Government bound by winding-up rules

140. The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Government of Samoa in all its capacities.

Certificate as to winding-up

141.(1) The Registrar upon application lodged by any person in the prescribed form accompanied by the prescribed fee, shall issue a certificate stating whether at the date of the certificate an international company is being wound up, or a petition has been presented for the winding-up of the company and is

pending.

(2) Notice of the issue and effect of such certificate may be given by telegram, cable, telex, facsimile or wireless if the applicant for the certificate so requests and pays the cost thereof.

(3) Neither the Government of Samoa nor the Registrar nor any officer or servant of the Government shall be liable by reason of any error, mistake, inaccuracy or delay in or in the giving of the certificate or notice by whatsoever cause or means arising, unless such error, mistake, inaccuracy or delay was wilful and fraudulent.

Effect of winding-up

142.(1) An international company shall from the commencement of the winding up cease to carry on business, except so far as, in the opinion of the liquidator -

- (a) is required for the beneficial winding-up of the international company; or
- (b) subject to section 143, is required for the performance of any contract which the liquidator may not disclaim pursuant to section 192.

but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in the articles, continue until it is dissolved.

(2) On the commencement of the winding-up of an international company all the powers of the directors shall cease except in so far as the liquidator of the company approves the continuance thereof.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, other than the transfer of a share warrant, and any alteration in the status of the members made after the commencement of the winding-up shall be void.

Avoidance of disposition of property

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

Costs of winding-up

144.(1) All proper costs, charges and expenses of and incidental to the winding-up of an international company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority 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.

Custody and vesting of company's property 145. On the

commencement of any winding-up or when a provisional liquidator has been appointed,

the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled and, on application by the liquidator to the Court all or any part of the property of the company of whatsoever description belonging to the company or held by trustees on its behalf may be vested in the liquidator by his official name.

Delivery of assets

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

Avoidance of certain transactions

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

Pending proceedings

148. After the commencement of the winding-up no action or proceeding shall be proceeded with or commenced nor shall any judgement be executed against an international company except by leave of the Court, and subject to such terms as the Court may impose.

Power to stay winding-up

149.(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, either altogether or for a limited time.

(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.

Delegation to liquidator of court's power

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

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

- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidators;
- (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.

Liability as contributories of present and past members

151.(1) Upon an international company being wound up every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves, subject to the other provisions of this section and to the following qualifications -

- (a) a past member shall not be liable to contribute if he has ceased to be a member for 1 year or more before the commencement of the winding-up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless the existing members have failed to satisfy the contribution required to be made by them in pursuance of this Act within 42 days from notice being given of such contribution in the manner prescribed.
- (d) upon a past member becoming liable to contribute pursuant to this subsection, he shall be immediately liable to pay the amount of such contribution to the liquidator of the company and thereupon shall be entitled to receive from the liquidator a certificate of the names of the existing members who have failed to contribute within the time provided by paragraph (c) and such certificate shall be conclusive evidence of the right of such past member to recover from such existing members jointly and severally the amount of the contribution paid by him.
- (e) no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable or in relation to companies limited by guarantee or companies limited by both shares and guarantee, to the amount specified in the memorandum;
- (f) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in the case of a composition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) Nothing in this section shall limit the liability of a director apart from his liability as a member in so far as that liability is imposed by this Act, the articles of the company or otherwise.

(3) Every resident director of the company shall be liable to contribute as a contributory upon the winding up of that company and for any knowing and wilful misconduct, knowing and wilful default or

knowing and wilful neglect.

(4) Every trustee company shall be liable to contribute to the assets of any company of which it is a member or past member as trustee upon a winding-up thereof to the extent of the assets in its hands 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 or guarantee amount remaining unpaid thereafter and the trustee company shall supply to the liquidator upon request all the information available to it relating to the cestui que trust.

Nature of liability of contributory

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

Contributories in case of death or bankruptcy of member

153.(1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of an international company in discharge of his liability and shall be a contributory accordingly, and if the personal representatives 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 Samoa or elsewhere a contributory becomes bankrupt or insolvent or assigns his estate for the benefit of his creditors, either before or after he had 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 the estate of the bankrupt the estimated value of his liability for future calls as well as those already made.

Distribution of assets

154. Subject to the provisions of section 153 and 156, and subject to the provisions of this Act as to preferential payments, the property of an international company shall, on its winding-up be applied in satisfaction of its liabilities equally, and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interest in the company.

Admission of claims to proof

155.(1) No claim shall be admitted to proof in a winding-up unless -

- (a) a judgement of a Court outside Samoa in respect thereof could be registered in any Court of Samoa and thereupon enforced in Samoa; or

(b) such claim would be enforceable by proceedings in a Court of Samoa.

(2) Where the identity or address of any member is not known to him, the liquidator shall pay any money due to such member to the Government under the Unclaimed Money Act 1964, and the provisions of section 172 relating to payments to the Government shall apply mutatis mutandis to such money.

Proof and ranking of claims

156.(1) In the winding-up of an insolvent international company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of the annuities and future and contingent liabilities as are in force or provided for in respect of the winding up of a domestic company and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the international company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

(2) Regulations may be made by the Head of State to provide for the proof of claims in a winding up of an international company but in the absence of such regulations the procedure to be followed shall be that which is for the time being provided for the proof of claims in the winding up of a domestic company.

Claims of creditors and distribution of assets

157.(1) Subject to subsection (2), the Court or, in the case of a voluntary winding-up the Registrar, may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The liquidator or, in a voluntary winding up the Registrar, as the case may be, may from time to time extend the date fixed pursuant to subsection (1) and fix a new date.

(3) Any surplus after payment of all liabilities of an international company, including the costs, charges and expenses of the winding-up, shall be distributed by the liquidator amongst the persons entitled thereto but, in the event of a dispute as to the persons entitled thereto, the liquidator, after receiving notice of such dispute, shall refer the dispute to the Court, and shall be discharged by payment in accordance with the order of the Court.

(4) If no notice of dispute as to the persons entitled to a distribution of the surplus or any part thereof is received by the liquidator prior to making such distribution, whether interim or final, the liquidator shall be discharged from any liability to any person in respect of the amount so distributed but without prejudice to the rights of such person to recover the same from the person receiving the distribution.

DIVISION 2 - COMPULSORY WINDING-UP

Application for winding-up

158.(1) An international company whether or not it is being wound up voluntarily, may be wound up compulsorily by order of the Court.

- (2) The Court may order the winding-up of an international company upon the petition of -
- (a) the company;
 - (b) a creditor including a contingent or prospective creditor of the company;
 - (c) a contributory of the company;
 - (d) the liquidator of the company;
 - (e) the Authority;

or any two or more of those persons.

(3) Every petition shall be filed in the Court in duplicate.

(3A) The petitioner shall serve a copy of the petition on the international company named therein.

(4) The Registrar of the Court, upon a petition being filed, shall forthwith deliver the duplicate copy thereof to the Registrar.

(5) Notice of any Order made on or in respect of a petition shall immediately be served by the petitioner on the Registrar and where applicable on the liquidator named in such order and on the international company named therein.

(6) Regulations may be made by the Head of State prescribing practice and procedure in Court applications or the grounds upon which a petition may be presented by any or all of the persons referred to in subsection (2), or the time within which petitions may be presented on any one or more grounds and specifying the circumstances in which a winding-up order may or may not be made or shall or shall not be made.

Circumstances in which company may be wound up compulsorily 159.(1)

Subject to section 158 the Court may order that an international company be wound up if -

- (a) the company has by special resolution resolved that it be wound up under the order of the Court;
- (b) default is made by the company in lodging an annual or other statutory return [Section 112, the provision on annual returns, was repealed by the International Companies Amendment Act 1991, No. 10, Section 63] repeated by the or lodging a statutory report or in holding a statutory meeting;
- (c) the company acquires the whole of its own shares or has no member; provided that it shall not be liable to be wound up under this paragraph so long as debentures of the kind referred to in section 57(3) are issued and not redeemed;
- (d) the company is unable to pay its debts;
- (e) directors have acted in the affairs of the company in their own interest rather than in the interests of the members as a whole or in any other manner whatsoever which appears to be unfair or unjust to other members;
- (f) the Court is of the opinion that it is just and equitable that the company should

be wound up; or

- (g) on the petition of the Authority it appears that-
 - (i) the company has persistently been in breach of this Act;
 - (ii) the company has failed to pay any penalty or fee which under this Act it is liable to pay;
 - (iii) the company has failed to pay the prescribed renewal fee within a period of 60 days after the same became due and payable.
 - (iv) as amended by the Offshore Centre Legislation Amendment Act 1993
 - (v) a director or officer of the company has failed to pay any penalty imposed on him under this Act;
 - (vi) the company has failed to make good a default within 60 days after services on it of a notice under the provisions of section 12(6) requiring it to do so; or
 - (vii) the company has been ordered by the Authority to cease carrying on business or any part of its business, under the provisions of section 225.

(2) An international company shall be deemed to be unable to pay its debts if -

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$1000 then due has served on the company by leaving at its registered office in Samoa a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due and the company has for 30 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 judgement, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

(3) No debt which cannot be admitted in a winding-up may found a petition on the ground that the company is unable to pay its debts.

(4) If, on the hearing of a petition to wind up an international company, it is reported that the assets and affairs of the company are such that the making of a winding up order would not be appropriate, the Court may instead order that the name of the company be struck off the register and the company shall thereupon be dissolved. Within 7 days of any order made under this subsection sealed copies of the order shall be lodged by the petitioner with the Registrar with the prescribed fee served upon or forwarded by registered post to the company at its registered office.

Commencement of compulsory winding-up

160.(1) Where before an order is made for the compulsory winding-up of an international company a voluntary winding-up of the company has commenced the compulsory winding up of the company shall be deemed to have commenced when the voluntary winding-up commenced.

(2) In any other case the compulsory winding-up of an international company shall be deemed to have commenced -

- (a) where a provisional liquidator has been appointed and an order for the company to be wound up is subsequently made, at the time when such appointment is made; and
- (b) where no provisional liquidator has been appointed, at the time when the order is made for the company to be wound up.

Payment of costs

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

Costs relating to winding-up

162. Rules may be made under section 222 to provide for the costs, fees and expenses of and incidental to proceedings under a compulsory winding-up, including the fees and remuneration of a liquidator but in the absence of such rules, the fees, costs and expenses payable for the time being on the winding-up of a domestic company shall be paid subject to the overall discretion of the Court to increase or decrease any such fees, costs or expenses.

Copy of order to be lodged

163.(1) The petitioner, within 7 days after the making of a winding-up order against an international company, shall lodge a copy of the order with the Registrar and, other than where the petitioner is the Authority, pay the prescribed fee, and shall, within the said 7 days cause copies of the order to be served upon the company and upon the liquidator appointed by the Court and within 14 days thereafter further deliver to the liquidator a certified statement that the requirements of this section have been complied with.

(2) If default is made in complying with subsection (1) the petitioner commits an offence against this Act.

Appointment of liquidator

164.(1) The Court upon making an order for the winding-up of an international company shall subject to the provisions of section 11 of this Act, appoint a liquidator of the company and the Court may require him to give such security as it thinks fit and that liquidator shall, unless the Court for special 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 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.

Validation of proceedings in voluntary winding-up

165. Unless the Court on proof of fraud or mistake, thinks fit otherwise to direct, all things done and all proceedings taken in any voluntary winding-up preceding the making of a winding-up order shall be deemed to have been validly done or taken.

Statement of affairs

166.(1) Upon a winding-up order being made in respect of an international company there shall be made out and in the prescribed form verified by affidavit and submitted to the liquidator a statement as to the affairs of the company as at the date of the winding-up order showing -

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given;
- (e) such further information as is prescribed or as the liquidator requires.

(2) A statement as to the affairs of an international company shall be submitted by one or more of the persons who, at the date of the winding-up order, were directors of the company, or by such of the persons hereinafter mentioned as the liquidator subject to the direction of the Registrar requires, that is to say persons -

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within 1 year before the date of the winding-up order;
- (c) who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates; or
- (d) where a voluntarily winding-up preceded the order, the liquidator in such winding-up.

(3) The statement shall be submitted within 30 days after the date of the winding-up order or within such extended time as the Court or the liquidator for good reason allows, and the liquidator within 7 days after its receipt shall cause a copy of the statement to be lodged with the Registrar.

(4) Any person making or concurring in making a statement as to the affairs of an international company required by this section subject to any regulations, may be paid by the liquidator out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement

as the liquidator considers reasonable.

(5) Any person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence against this Act.

Settlement of list of contributories and application of assets

167.(1) As soon as may be after making a winding-up order in respect of an international company, the Court shall settle a list of contributories and may rectify the register of members and in the case of a company which issued share warrants, or bearer shares enquire into and determine who are the members of the company, in all cases where such rectification or enquiry is required for settling a correct list of contributories.

(2) Notwithstanding subsection (1), where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, it may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the obligations of others.

(4) The list of contributories when settled shall be prima facie evidence of the liabilities of the persons named therein as contributories.

Report of liquidator

168.(1) The liquidator in a compulsory winding-up of an international company, as soon as practicable after receipt of the statement of affairs, shall submit a preliminary report to the Court -

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the cause of the failure; and
- (c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The liquidator if he thinks fit, may make further reports stating the manner in which an international company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

DIVISION 3 - VOLUNTARY WINDING-UP

Circumstances in which company may be wound-up voluntarily 169.(1) An

international company which is able to pay or provide for the payment of its debts in full or if

not in full to the satisfaction of its creditors, may be wound up voluntarily if the company has by special resolution resolved that it be wound up voluntarily and has lodged notice thereof with the Registrar.

(2) Upon the Registrar being satisfied that the notice of the resolution for the winding-up of the company has been lodged with him, he shall appoint an official liquidator to be liquidator of the company and thereupon the winding-up shall commence.

(3) The liquidator or the Registrar may give such notices and make such enquiries as they see fit to ascertain the identity of the holders of the shares in an international company and of the creditors thereof, and the costs and expenses of so doing shall be paid out of the assets of the company.

Declaration of solvency

170.(1) Where it is proposed to wind up an international company voluntarily the director of the company or, in the case of a company having more than 2 directors, a majority of the directors before the date on which the resolution for the winding-up of the company is passed under section 169, or the notice under section 169 is lodged, shall make and lodge with the Registrar a written declaration to the effect that they have made an inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the date of the making of the declaration.

(2) There shall be attached to the declaration referred to in subsection (1) in relation to an international company a statement of affairs of the company showing in the prescribed form -

- (a) the assets of the company and the total amount expected to be realised therefrom;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding-up;

made up to the latest practical date before the making of the declaration.

(3) A declaration in relation to an international company so made shall have no effect for the purposes of this Act unless it is -

- (a) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding-up; and
- (b) lodged with the Registrar before the date on which the resolution for the winding-up of the company is passed.

(4) A director who makes a declaration in relation to an international company under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration commits an offence against this Act.

(5) If an international company is wound up pursuant to a resolution for voluntary winding-up passed within a period of 5 weeks after the making of the declaration but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

Conversion of voluntarily winding-up to compulsory winding up 171.

Where an international company is being wound up voluntarily -

- (a) if the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full or, if not in full, to the satisfaction of all the creditors, he shall forthwith give notice to the creditors of that opinion; and
- (b) upon such notice being given the winding-up shall continue as a compulsory winding-up and the liquidator shall forthwith lodge with the Court a notice to that effect in the prescribed form and thereupon the Court shall be deemed to have ordered the winding-up and to have appointed the liquidator.

Payment of claims by liquidator of company in voluntary liquidation

172.(1) Within 120 days after the commencement of the voluntary winding-up of an international company, or within such further time as the Registrar may allow the liquidator shall make such enquiries as to claims and give such notices by advertisement or otherwise as regulations may require and as the liquidator thinks fit, and thereafter the liquidator, subject to the retention of a fund sufficient to meet the costs, charges and expenses and future costs, charges and expenses of the liquidation, shall pay such claims in the liquidation of which he has actual notice and which he has admitted or which are admissible and, without regard to other claims of which he has no notice or which are not admissible, shall distribute the surplus rateably amongst the contributories, in the case of those contributories whose identity is known to the liquidator by paying over to them their shares or otherwise accounting to them for their respective shares in the surplus and in the case of those contributories whose identities are not known to the liquidator by paying over the shares of those contributories to the Government under the Unclaimed Money Act 1964.

(2) Upon making the payments referred to in subsection (1) the liquidator shall file with the Registrar a certificate to that effect and the international company named therein shall be thereupon dissolved.

(3) A claim by an unidentified contributory to recover his shares in the surplus paid to the Government pursuant to subsection (1) shall be made in accordance with the Unclaimed Money Act 1964 provided such claim is made within 3 years of the liquidator's certificate and prosecuted with due diligence thereafter.

(4) The Court may extend the time for making a claim under the Unclaimed Money Act 1964, where the time for making the claim has not expired.

(5) Regulations may be made for the making and determination of claims of creditors either not admitted by the liquidator or barred by the dissolution of an international company prior to their submission to and allowance by the liquidator, and prescribing the amounts which may be claimed, either in respect of a particular company or in respect of a particular claim, and for enabling recovery from contributories to whom payment of surplus have been made or from the Government in respect of money paid in as unclaimed money and of costs, charges and expenses incurred in respect of the claims made: Provided that such regulations shall not permit recovery from a contributory or the Government unless proceedings to enforce recovery are commenced within a period of 3 years from the date of the liquidator's certificate.

DIVISION 4 - LIQUIDATORS

Vacancy in office of liquidator

173. 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.

Replacement of liquidator

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

Validity of liquidator's Acts

175.(1) The acts of a liquidator shall be valid notwithstanding any defects that may be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of an international company's property made by a liquidator, notwithstanding any defect or irregularity affecting the validity of the winding-up or appointment of the liquidator, shall be valid in favour of any person taking such property bona fide and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to such person.

(4) For the purpose of this section a disposition of property shall be taken as including a payment of money.

General provisions as to liquidators 176.(1) A person

appointed to be the liquidator of an international company may resign.

(2) In the event of an international company or contributory seeking the removal of a liquidator and such removal being opposed by the liquidator, the question shall be referred to the Court and upon cause being shown the Court may order that the said liquidator be removed and thereupon the said liquidator shall cease to be the liquidator of the company.

(3) Upon discovery of any defect in the appointment or qualifications of a liquidator, the Registrar may by public notice 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.

Powers of liquidators 177.(1) A liquidator may, subject to

regulations made under this Act and, in a compulsory winding-up of

an international company, subject to any order or rule of the Court -

- (a) carry on the business of the company so far as is necessary for the beneficial winding-up thereof;
- (b) subject to the provisions of this Act, pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having, or alleging themselves to have, any claim present or future, certain or contingent, ascertained or sounding only in damage, against the company or whereby the company may be rendered liable;
- (d) compromise any calls or liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as are agreed and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof;
- (e) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (f) appoint a barrister, solicitor, a trustee company, and accountant or other expert to assist him in his duties;
- (g) sell the real and personal property and things in action of the company by public auction, public tender or private contract with power to transfer the whole to any person or company or to sell the same in parcels;
- (h) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;
- (i) prove rank and claim in the insolvency, sequestration bankruptcy or liquidation of any contributory or debtor for any balance against his estate, and receive dividends in the insolvency, sequestration bankruptcy or liquidation in respect of that balance as a separate debt due from the insolvency, bankrupt or company in liquidation and rateably with other separate creditors;
- (j) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
- (k) raise on the security of the assets of the company any money required;
- (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 company, and in all such cases the money due is 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, 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 and 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 things as are necessary or convenient and reasonable for winding-up the affairs of the company and distributing its assets.

(2) If any creditor or contributory of an international company contends that the liquidator should do or refrain from doing any of the acts or things herein before mentioned or is aggrieved by any act or decision of the liquidator, such person may submit to the Registrar his contention in respect thereof, setting forth the ground therefor and if the Registrar is of the opinion that the contention is one which might be reasonably sustained, whether the Registrar would himself sustain it or not he shall inform the liquidator and the contention shall thereupon be referred to the Court and the liquidator shall act in accordance with any order made by the Court. Unless the Court orders otherwise, the liquidator shall be entitled to his costs and expenses of the proceedings out of the assets of the company and, if prior to the contention being referred to the Court, the liquidator certifies to the Court that there is a doubt whether the assets of the company will be sufficient to satisfy such costs after providing for all other then known expenses and out goings, the Court shall not then proceed with the hearing until full security for such costs and expenses has been provided by the applicant and such security to the extent to which the liquidator is unable to satisfy such costs and expenses from the assets of the company, shall answer for the same and in any event shall answer for the same in the first instance; and the Court may order the applicant to pay to the company the whole of the liquidator's costs and expenses or such part thereof as it thinks fit, and may order the liquidator or he company to pay the whole of the applicant's costs or expenses or such part thereof as it thinks fit.

Exercise and control of liquidator's power

178.(1) Subject to the provisions of this Act, the liquidator in the administration of the assets of an international company and in the distribution thereof amongst its creditors shall have regard to any directions given by the creditors or contributories at any meeting or otherwise in accordance with this Act.

(2) The liquidator may summon a meeting 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).

(3) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the affairs and property of an international company and the distribution of its assets.

Payment by liquidator into bank

179.(1) Every liquidator shall pay the monies received by him into a bank account opened by him for the purposes of his activities as liquidator, and regulations may be issued prescribing the bank account approved for this purpose and the manner and terms under which such bank account is to be conducted.

(2) For the purposes of this section bank account means an account in the name of the liquidator or in the name of the company in liquidation or in such other name as the Registrar directs, at such bank carrying on business in Samoa as is approved by the Registrar for the purpose of this section.

Committees of inspection

180. Regulations may be made by the Head of State relating to the appointment, constitutions, powers, duties, remuneration and removal of committees of inspection and for the appointment, the removal and the substitution of the members thereof.

Sale of property by liquidator other than for cash

181.(1) In any voluntary winding-up of any international company the liquidator shall have power to sell, transfer or dispose of the business or property of the company in whole or in part in consideration of or in part consideration of the transfer, allotment or sale to him of shares, debentures, policies, choses in action or other like interests in other companies or in another company for distribution amongst the members in the winding-up, without it being necessary for the liquidator to receive such number of such shares, debentures, policies choses in action and the like as to permit of an exactly equal distribution amongst the members and the liquidator shall have power to transfer by way of distribution, some or all of such shares, debentures, policies, choses in action or the like to two or more members as tenants in common, and he may enter into any other arrangement whereby the members of the company in lieu of receiving cash, shares, debentures, policies, choses in action or other like interests, or in addition thereto, may participate in the profits of or receive any other benefit from some other company or companies and any such transfer, sale, allotment or arrangement shall be binding on the members of the company: Provided, however, that notice of the liquidator's intention in that behalf shall be given by him to such of the members of the company whose identities are known to him and, if within 21 days from the giving of such notice 25 per centum of those to whom notice has been given dissent from the course proposed, the liquidator shall either abstain from carrying out the course proposed or purchase the interest of the dissenters at a price to be determined by agreement or by the Court.

(2) In entering into any contact with another company or other companies for the sale of the whole or part of the business or property of the company in return for the transfer, allotment or sale of shares, debentures, policies, choses in action or other like interests or for any right to participate in profits of such other company or companies, or to receive any other benefits of such other company or companies, the liquidator may make the dissent of the said 25 per centum of members as aforesaid a condition precedent or a condition subsequent to the contract and in the absence of the expression of such a condition or event or 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.

Liquidator's book

182. 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 contributor may, with approval of the Registrar, personally or by his agent inspect such books.

Liquidator's returns

183. Regulations may be made by the Head of State 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.

Invoices etc., of company in liquidation

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

(2) If default is made by an international company in complying with this section, the company and every officer and liquidator of the company and every receiver or manager who knowingly and wilfully authorises or permits the default commits an offence against this Act.

Books of liquidator and company

185.(1) Where an international company is being wound up or has been wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding-up of the company as between the contributories of the company shall be prima facie evidence of the truth of all matters purporting to be therein recorded.

(2) Where an international company has been wound up the liquidator shall return the books and papers to the resident secretary of that company who shall ensure that those books and papers are retained by a trustee company for a period of 6 years from the commencement of the winding-up. After the expiration of the 6 years the books and papers may be destroyed.

(3) The Registrar may cause any additional records or registers to be destroyed after the expiration of 6 years from the commencement of the winding-up.

(4) No responsibility shall rest on the liquidator of an international company or the Registrar by reason of any book or paper of the company being mislaid or not being forthcoming to a person claiming to be interested therein.

Investment by liquidator

186. Whenever the cash balance standing to the credit of an international company in liquidation is in excess of the amount which in the opinion of the liquidator is required for the time being to answer the demands in respect of the company, the liquidator may invest the sum or any part thereof in any investment approved in writing by the Authority.

Liquidators' expenses

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

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

DIVISION 5 - DISSOLUTION

Dissolution

188.(1) As soon as the affairs of an international company are fully wound up, the liquidator, unless the winding-up is governed by section 172, shall prepare an account showing how the winding-up has been conducted and the property of the company has been disposed of, and, unless the Registrar otherwise orders, shall send a copy of the account to each member of the company of whose name and address he is aware and, where the creditors of the company have not been paid in full or had their debts compromised, also to each creditor of whose name and address he is aware and shall lodge with the Registrar and in the case of a compulsory winding-up also, file in the Court a copy of the account together with a statement of the date upon which it was dispatched as aforesaid.

(2) On the expiration of 3 months after the lodging of a return with respect to an international company with the Registrar, the company shall be dissolved.

(3) Notwithstanding the provisions of subsection (2), the Registrar or, in the case of compulsory winding-up, the Court, on application by the liquidator, or by any other person who appears to the Registrar or the Court, as the case may be, to be interested or, in the case of a compulsory winding-up, by the Court, may make an order or direction deferring the date at which the dissolution of an international company is to take effect for such time as the Registrar or the Court, as the case may be, thinks fit but not exceeding 6 months and, in special circumstances, may extend the period upon further application for further periods of not more than 6 months.

(4) Except where the applicant is the Registrar, the person on whose application an extension is granted under subsection (3) within 14 days after the granting of the extension, shall lodge with the Registrar, a copy of the direction of the Registrar or order of the Court, as the case may be, which shall set forth the name of the applicant and of the company and the date upon which the extension was granted and the period for which it was granted and shall pay the prescribed fee therefor and, if the applicant is not the liquidator, shall send a copy thereof to the liquidator and in default thereof the extension shall cease and the company shall forthwith be dissolved upon the date upon which it would have been dissolved if the order or direction had not been made.

(5) Where an extension is granted in relation to the dissolution of an international company upon the application of the Registrar, he shall forthwith note the order of the Court upon his records relating to the company and shall send a copy thereof to the liquidator.

(6) Upon the dissolution of an international company the liquidator, unless the Court upon the application of any interested person or of its own motion otherwise orders prior to the dissolution, shall be released from all claims by the contributories, the creditors and the company.

Accountability of liquidator

189.(1) The Court, if it sees fit, may cause a report to be made on any accounts of the liquidator by a registered company auditor appointed by the Court for that purpose and pursuant to such report may issue a summons requiring the liquidator to appear before it and upon the hearing of such summons may make such order or give such directions as it thinks fit, including an order for the liquidator to make good any loss suffered by an international company resulting from his knowing and wilful misconduct, knowing and wilful default or knowing and wilful neglect.

(2) When the liquidator has realised all the property of an international company or so much thereof as can in his opinion be realised without needlessly protracting the liquidation or incurring expense without sufficient warrant, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories, amongst themselves and made a final return if any to the contributories he may apply to the Court -

- (a) for an order that he be released; or
- (b) For an order that he be released and that the company be dissolved.

(3) When the liquidator has resigned or been removed from his office he may apply to the Court for an order that he has been released.

(4) Upon an application by a liquidator for an order that he be released, the Court in granting the application may impose such terms and conditions as it thinks fit; and any such order may be revoked on proof that it was obtained by fraud.

(5) The liability of an official liquidator shall except for liability for knowing and wilful misconduct, knowing and wilful default and knowing and wilful neglect, be discharged upon the issue of the order by the Court releasing him as liquidator.

(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 order releasing the liquidator shall, within 10 days after the making thereof, be lodged by the liquidator with the Registrar.

DIVISION 6 - EFFECT ON OTHER TRANSACTIONS

Voidable transactions

- 190.(1)** (a) Every conveyance assignment or transfer of property, or charge thereon made or created, every payment made and every obligation incurred, by an international company or a foreign company registered under Part X, whose liabilities exceed the value of its assets, after taking account of any contingent and prospective liabilities, in favour of a creditor, or of any person in trust for any creditor or in favour of a connected person or a related company or in favour of a person or company in trust for such connected person or related company and the effect is to give such creditor or any surety or guarantor for the debt due to such creditor or such connected person or related company, a preference, priority or advantage over other creditors, shall, if the winding-up of the company commences within 6 months or, in the case of a connected person or related company within two years, after the date of the conveyance, transfer, charge, payment or obligation incurred by the company, be void against the liquidator unless -
- (i) the payment to the creditor, or to the person in trust for such creditor, or to the connected person or related company, or to the person or company in trust for such connected person or related company, was in good faith and in the ordinary course of the company's affairs; or
 - (ii) the conveyance assignment or transfer of the property was in good faith and to a bona fide purchaser and for consideration received by the

company at the time of the conveyance assignment or transfer; or

- (iii) in the case of a charge created or obligation incurred, the company received cash or other consideration at the time of, and in consideration for, the creation of the charge, at least equal to the total amount secured by the charge.
- (b) payment to a connected person or related company shall not be considered to be in good faith if such person or company who received the payment knew or had reason to suspect that the company's liabilities exceeded its assets after taking account of any contingent and prospective liabilities, and that the effect of the payment would be to give that person or company a preference, priority or advantage over other creditors;
- (c) where the payment or transfer of property was made with a view to obtaining the release of a guarantor or surety in whole or in part, the transaction shall be treated as a preference given to the guarantor or surety as well as to the creditor and the guarantor or surety shall be treated as a creditor who has received a benefit to the extent to which he has been or is liable to be released from the guarantee or surety;
- (d) where a payment or transfer of property has been set aside as a voidable preference, the creditor shall, on repayment, have the same remedies against the guarantor or surety and against any property securing the guarantee or surety as he would have had, if the company, had not made the payment to the creditor. No proceedings shall however be capable of being brought to enforce any security against property where this will prejudice a bona fide purchaser of the property, or some interest therein, without notice of the facts alleged to have the effect of constituting a preference. In such circumstances only the personal remedy shall lie; and
- (e) The claimant shall be able to proceed at his option either--
 - (i) directly against the guarantor or surety without joining the creditors; or
 - (ii) against the creditor; joining the guarantor or surety unless the creditor waives the requirement.

(2) A floating charge on the property of an international company or a foreign company registered under Part X created within 12 months of the commencement of the winding-up shall, unless it is proved that immediately after the creation of the charge, the value of the assets of the company exceeded the amount of its liabilities, taking account of contingent and prospective liabilities, be invalid, except to the amount of any money actually advanced or paid or the actual price or value of goods sold or supplied to the company 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 5 per centum per annum or such other rate as may from time to time be prescribed by Regulations, unless the charge has the effect of giving security for a past consideration.

Sales other than at proper value

191.(1) Where any property, business or undertaking has been acquired by an international company or foreign company registered under Part X for a consideration within a period of 1 year before the commencement of the winding-up of the company from a person or company who at the time of the acquisition was a connected person or a related company, the liquidator may recover from the person or the

company from which the property, business or undertaking was acquired any amount by which the cash consideration paid by the company 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 company registered pursuant to this Act or foreign company registered under Part X to a connected person or related company for a consideration within a period of 1 year before the commencement of the winding-up of the company, the liquidator may recover from the person or company to which the property, business or undertaking was sold, any amount by which the value of the property, business, or undertaking at the time of the sale exceeded the consideration.

(3) Where the property, business or undertaking of an international company, or a foreign company registered under Part X of this Act, has been transferred, charged or sold, or agreed to be transferred, charged or sold to, or in favour of, a third party, in payment of a debt or obligation of a connected person or related company, within 1 year of the commencement of the winding-up, the liquidator may recover from that third party any amount by which the value of the property, business or undertaking, at the time of the transfer, charge or sale, or the agreement to transfer, charge, or sell, exceeded the consideration received by the company or, where the company received no consideration as defined in subsection 6, the liquidator, subject to subsection (7) may recover the property, business or undertaking from the third party, free from any charge created thereon by the company, which shall be void.

(4)

(a) For the purpose of this section and section 190 an individual shall be considered to be a connected person -

(i) where the individual is a director or substantial shareholder of the company; or

(ii) where the individual is connected with such an individual as aforesaid

For this purpose, a person shall be regarded as a substantial shareholder of a company if he alone or together with persons connected with him, controls the composition of its board of directors or holds, or controls, more than half of the voting power of the company or more than half of its issued shares or share capital.

(b) for the purposes of this section and section 190, a related company shall have the meaning assigned to it in section 4 of this Act; and

(c) in this section and section 190 "consideration" means full consideration in money or money's worth, equal at least in value, to the value of the property conveyed assigned, transferred, or sold, or to the total amount secured by the charge, as the case may be.

(5) Notwithstanding the provisions of this section and section 190, the Court, on application, shall have discretion in appropriate circumstances to grant relief and shall refuse recovery in whole or in part if -

(i) the person from whom recovery is sought received the money or property in good faith and has altered his position in the reasonably held belief that the payment or transfer to him was validly made and was not liable to be set aside; and

(ii) in the opinion of the Court it would be unjust to order recovery in whole or in part - as the case may be.

Disclaimer of onerous property

192.(1) Where -

- (a) any part of the property of an international company consists of--
 - (i) any estate or interest in land burdened with onerous covenants;
 - (ii) shares or stocks in companies;
 - (iii) unprofitable contracts; or
 - (iv) any other property that, for whatever reason, is unprofitable or not readily saleable; and
- (b) the mere interest in the contract or property binds the international company, or is likely to bind the international company, to the payment of any sum of money or the disposition of any assets of the international company,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relationship thereto, subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding-up, may disclaim the property and shall forthwith send a copy thereof to every person affected thereby of whom he has actual notice; but where any such property has not come to the knowledge of the liquidator within 1 month after the commencement of the winding-up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof.

(2) A disclaimer by the liquidator of an international company shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as it is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) A liquidator of an international company shall not be entitled to disclaim any property if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within the period of 2 months after the receipt of the application, or such further period as may be allowed by the Court, 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 company shall be deemed to have adopted it.

(4) Any interest person aggrieved by any disclaimer by the liquidator under this section within 60 days of the date of that disclaimer, may apply to the Court to have the disclaimer set aside and, if the Court so orders, the disclaimer shall be set aside and shall be void ab initio.

(5) A party to a contract with an international company in respect of which winding-up has commenced, which contract has not been disclaimed by the liquidator, either with or without requiring the liquidator to elect whether he disclaims the contract, may require the liquidator to state whether he intends to endeavour to perform the contract so far as the same remains to be performed on the part of the company, and, in the event of the liquidator failing to state within 2 months after receipt of a notice by him requiring him so to do that he so intends, that party, with the consent of all other parties, if any, other than the liquidator, without being liable in damages for rescission of the contract, may rescind the contract and any amount recoverable by the company pursuant to such rescission may be thereupon recovered by the liquidator from the other party or parties and any amount recoverable from the company pursuant to such rescission may be proved for in the winding-up by such other party or parties, provided however that a liquidator shall not become personally liable for the performance of the contract by reason only that he

states whether or not he proposes to endeavour to perform it, unless he makes such statement fraudulently.

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

DIVISION 7 - OFFENCES

Offences by officers of companies in liquidation

193.(1) Every person commits an offence against this Act who, being a past or present officer of an international company which is being wound up -

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property real and personal of the company and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator or as he directs -
 - (i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by all to deliver up;
- (c) within the 6 months next before the commencement of the winding-up or at any time thereafter -
 - (i) has concealed any part of the property of the company to the value of \$50 or upwards, or has concealed any debt to or from the company;
 - (ii) has fraudulently removed any part of the property of the company to the value of \$50 or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper effecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to parting fraudulently with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not

subsequently paid for;

- (vii) has obtained on credit, for or on behalf of the company under the false pretence that the company is carrying on its business or has a current certificate of incorporation, any property which the company has not subsequently paid for; or
- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of business of the company;
- (d) wilfully makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of 1 month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up;
- (h) has attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious losses or expenses.

(2) It shall be a defence to a charge under subsection (1)(a), (b), (d) or (c)(i), (vii) or (viii) if the accused proves that he had no intent to defraud and to a charge under subsection (1)(c)(iii) or (iv) or (f) if he proves that he had no intent to conceal the state of affairs of an international company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(c)(viii) every person who takes in a pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence against this Act.

(4) Any person who within Samoa offers any shares or debentures to the public or to any member of the public, not being a company for subscription or purchase commits an offence unless the Minister has given prior consent in writing under Part XII.

(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 commits an offence against this Act.

Frauds by officers

194. Any person who, while an officer of an international company which is subsequently wound up -

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

any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

- (c) with intent to defraud creditors of the company has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgement or order for payment of money obtained against the company;

commits an offence against this Act.

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

195. As amended by the International Companies Amendment Act 1991.

Personal liability for debts 196. As

amended by the International Companies Amendment Act 1991.

DIVISION 8 - DEFUNCT COMPANIES

Powers of the Registrar to Strike Companies Off the Registrar 197.(1)

The Registrar may strike off from the Register the name of an international company -

- (a) which ceases to comply with any of the requirements of section 6 or section 7;
- (b) for failure to pay its prescribed annual renewal fee or penalties, as specified in the regulations;
- (c) for failure to comply with a direction from the Registrar under subsection (2) of section 23;
- (d) which is not carrying on business or in operation;
- (e) which has been directed by the Minister under section 225 to cease to carry on its business;
- (f) which is being wound up, and has no liquidator acting or whose affairs have been fully wound up.

(1A) Where the Registrar intends to strike off the name of an international company under this section, he shall give notice of his intention to the company at its registered office in Samoa. The notice shall state that if an answer showing case to the contrary is not received within two months from the date thereof, the Registrar will strike the name of the company off the register.

(2) At the expiration of the time specified in the letter forwarded to an international company under subsection (1), or such further time as the Registrar deems fit, he may, unless cause to the contrary is

previously shown, strike the name of the company off the register and the company shall thereupon be dissolved; however -

- (a) the liability, if any, of every officer and member of the company shall continue for a period of two years following the date upon which the company is dissolved and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the liability of the company to be wound up pursuant to the provisions of this Act.

(2A) Upon the request of an international company, such request having been approved by a special resolution of the members and being accompanied by a statutory declaration signed by all of the directors to the effect that the international company no longer carries on business and has no outstanding liabilities to creditors and no assets (other than assets represented by cash) the Registrar shall, unless he has cause to believe that the contents of the directors' statutory declaration are incorrect, strike the name of the international company off the register and the international company shall thereupon be dissolved and the provisions of subsection (2) shall apply *mutatis mutandis*.

Where an international company has been struck off the Register, the Registrar may -

- (a) upon the application of the international company or a trustee company on its behalf, or a creditor, member or liquidator of the company; and
- (b) if he is satisfied that due cause has been shown and that it would be just for the name of the company to be restored to the Register; and
- (c) upon payment of the prescribed fee and any outstanding fees and penalties, and
- (d) upon the filing of such documents and statutory returns as the Registrar may direct

restore the company to the Register. Upon restoration of the company to the Register, the company shall be deemed to have continued in existence as if it had never been struck off the Register.

(4) Where costs, charges or fees or arrears, if any, thereof are paid under subsection (3) in respect of any international company which is being wound up, such costs, charges, fees and arrears shall be deemed to be costs of the liquidation.

(5) Notwithstanding subsection (1) and (2), where an international company, or an officer of an international company, notifies the Registrar in writing that the company does not intend to pay the prescribed annual renewal fee on the date when it next becomes due and payable, the Registrar may, on that date strike the name of the company off the register without having given to the company any notice of his intention to do so; and the striking-off of the name of the company shall be deemed to have been done under subsection (2).

(6) Where a company has been dissolved the Court may, at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested make an order upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon proceedings may be taken which might have been taken as if the company had not been dissolved.

(7) It shall be the duty of the person on whose application an order is made under subsection (6) within 7 days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a sealed copy of the order and if that person fails to do so he commits an offence under this Act.

Registrar to act as representative of defunct company in certain events

198.(1) Where after an international company has been dissolved it is proved to the satisfaction of the Registrar -

- (a) that the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
- (b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing,

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

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

Outstanding assets of defunct company to vest in Registrar

199.(1) Where, after an international company has been dissolved, there remains any outstanding property, real or personal, including choses in action, and whether within or outside Samoa which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property except uncalled capital, for the purposes of the following subsections and notwithstanding any enactment or rule of law to the contrary, by the operation of this section shall be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) The Registrar may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person who may have an interest in the same in such manner, for such consideration and upon such terms and conditions as he thinks fit with power to rescind any contract and resell or otherwise dispose of or deal with such 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 dealt with under the Unclaimed Money Act 1964.

(4) Any action for or in respect of any moneys paid under the provisions of subsection (3) shall be against the Registrar as the nominal defendant and shall be instituted within 2 years next after the dissolution of an international company after which time no such action shall be instituted and the claim shall be absolutely barred.

PART X - Foreign Companies

Interpretation

200.(1) This Part applies to a foreign company only if it has a permanent establishment or is carrying on business within Samoa and is not registered under the Companies Act, 1955.

(2) Carrying on business includes -

- (a) establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Samoa as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; and
- (b) in the case of a foreign company in respect of which the Authority has by public notice so specified, suffering or permitting the company's own shares to be dealt with, issued, transferred or made the subject of options or agreements within Samoa 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 company, to be made within Samoa;

and "to carry on business" has a corresponding meaning.

(3) Notwithstanding subsection (2), a foreign company shall not be regarded as carrying on business within Samoa by reason only of the fact that within Samoa it -

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or of any claim or dispute;
- (b) conducts unsolicited isolated transactions that are completed within a period of 31 days not being one of a number of similar transactions repeated more than twice.
- (c) enters into transactions or dealings with one or more international companies or foreign companies of a nature which do not entail the creation of a permanent establishment in Samoa;

(4) A foreign company shall not have a permanent establishment in Samoa or carry on business within Samoa unless it is registered as a foreign company under this Part and a foreign company which acts and every officer thereof who permits the foreign company to act in contravention of this subsection commits an offence against this Act.

(5) A foreign company shall not carry on in Samoa any business which a company incorporated under this Act may not carry on.

(6) The Authority may by public notice order that any foreign company be restricted from carrying on any specified business with Samoa and may by public notice impose conditions subject to which any specified business may be carried on by a foreign company within Samoa.

(7) Registration of any company under this Part X shall be conclusive of the fact that, for the purposes of the definition of "foreign company" in section 2 of this Act, the company is validly incorporated outside of Samoa.

Documents, etc., to be lodged by foreign companies

201.(1) Every foreign company shall, prior to establishing a place of business or carrying on business within Samoa, lodge with the Registrar for filing -

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
- (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;
- (c) a list of its directors and officers containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors and secretaries of a company incorporated under this Act;
- (d) where a list includes directors resident in Samoa who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of a foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the manner prescribed by the Registrar stating the name of a trustee company that is authorised to accept on its behalf service of process and any notices required to be served on the company;
- (f) the address of the principal office of the trustee company which is to be the registered office of the foreign company in Samoa; and
- (g) a declaration in the form prescribed by the Registrar setting out particulars of its authorised capital;

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

(2) Where a memorandum of appointment of power of attorney lodged with the Registrar in pursuance of subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment of power of attorney, verified by statutory declaration in the manner prescribed by the Registrar shall be lodged with Registrar and the copy shall for all purposes be regarded as an original.

(3) Every foreign company shall have as its registered office in Samoa the principal office of a trustee company.

(4) On the registration of a foreign company under this Part or the lodging with the Registrar of particulars of a change or alteration of name and on payment of the prescribed fee, the Registrar shall issue a certificate in the prescribed form under his hand and seal which certificate shall be prima facie evidence in all Courts of the particulars mentioned in the certificate.

(5) The registration of a foreign company under this Part, shall on payment of the prescribed fee, be renewable from year to year and the provisions of subsections (4), (5) and (6) of section 14 shall apply mutatis mutandis to every such renewal.

Return to be lodged where documents etc. altered

202.(1) Where any change or alteration is made in -

- (a) the charter, statute, memorandum or articles of the foreign company or other instrument lodged with the Registrar;
- (b) the directors of the foreign company;
- (c) the address of the registered office of the foreign company in its place of incorporation or origin;
- (d) the name of the foreign company; or
- (e) the powers of any directors resident in Samoa who are members of the local board of directors of the foreign company,

the foreign company shall within 1 month after the change or alteration lodge with the Registrar particulars of the change or alteration and such documents as regulations may require.

Services on foreign companies

203. Any process or document required to be served on a foreign company shall be sufficiently served if addressed to the foreign company and left at or sent by post to its registered office in Samoa, but -

- (a) where any such company makes default in filing with the Registrar the name and address of a registered office which is authorised to accept on behalf of the company service of process or notices; or
- (b) if at any time the registered office so notified has ceased to exist or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Samoa, or, if no such place of business is established, a document may be served on the company by registered post to any place of business of the company in the country of its incorporation.

Cessation of business in Samoa

204. If a foreign company ceases to have a place of business or to carry on business in Samoa it shall within 7 days after so ceasing lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document, not being a document that ought to have been lodged before that day, with the Registrar shall cease, and the Registrar shall forthwith remove the name of the foreign company from the register.

Foreign liquidation

205.(1) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin -

- (a) the company or, where the company has been dissolved, the person in whom the assets of the company vest by virtue of the law of that place pursuant to the liquidation or dissolution shall, within 1 month after the commencement of the

liquidation or dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment;

- (b) the Registrar shall forthwith appoint a liquidator and, until the winding-up of its affairs in Samoa is completed, the foreign company shall be deemed to continue to exist in Samoa; and
- (c) the Court shall be deemed to have ordered that it be wound up.

(2) The liquidator so appointed shall get in all the assets of the foreign company situated in or recoverable in Samoa and shall, in so doing, have all the powers of a liquidator of an international company incorporated in Samoa.

(3) Before paying, or transferring, to the foreign liquidator any of the assets got in within Samoa the liquidator shall -

- (a) pay to the Registrar all penalties, costs, fees, and charges due and owing; and
- (b) pay to any person resident in Samoa to whom at the time of the appointment of the liquidator in Samoa any debt was due, incurred bona fide by the foreign company, in respect of the supply of services to or for the foreign company, the amount of such debt;

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

(4) The provisions of this Act relating to the striking-off from the Register of Companies the names of international companies shall apply mutatis mutandis to foreign companies.

Names of foreign companies

206.(1) The restrictions upon the registration of the names of international companies shall apply mutatis mutandis to the registration of foreign companies.

(2) If a foreign company is registered, either in error or otherwise, with a name with which it should not have been registered, the Registrar may, upon 30 days notice to the foreign company requiring it to change its name, strike the company from the register upon default in its so doing.

(3) No foreign company shall use in Samoa, or elsewhere by reference to acts done or to be done in Samoa, any name other than that under which it is registered under this Part and every foreign company and every officer of the company who knowingly authorises or permits the default commits an offence against this Act.

Returns by foreign companies

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

PART XI - Miscellaneous

Service of document on companies

208. Any document may be served on a company by leaving it at or sending it by post to the registered office of the company or by leaving it at or sending it by post to, the address in Samoa of the resident agent of the company.

Transfer from Samoa of companies incorporated under this Act

209.(1) An international company incorporated under this Act may, upon obtaining the approval of the Registrar and within 2 months from the date on which that approval is obtained, apply to the proper officer of a country other than Samoa, or of a jurisdiction within such a country, by the law of which such transfer is authorised for an instrument transferring the company as if it had been incorporated under the laws of that other country or jurisdiction and on the date of the instrument of transfer, the company shall, subject to the provisions of this section, become a company under the laws of that country or jurisdiction and be domiciled therein.

(2) An international company shall not apply to the Registrar for approval under subsection (1) unless

- (a) that application is authorised by -
 - (i) where any shares of the company are in existence, holders of not less than three-quarters of such shares of each class;
 - (ii) the holders of not less than three-quarters of the company's debentures, if any, of each class;
 - (iii) where the company is limited by guarantee, not less than three-quarters of the guarantee members; and
 - (iv) all the directors of the company:

the company, not less than 30 days before applying to the Registrar for such approval, has published a public notice in Samoa of its intention to make the application; and
- (b) the company lodges with the Registrar an affidavit sworn by a director of the company in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.

(3) The Registrar shall give his approval to an international company applying for its transfer to another country or jurisdiction if he is satisfied that -

- (a) the requirement of subsection (2) have been completed with;
- (b) the intended transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the company's members, debenture-holders or

creditors; and

- (c) the company has complied with any provision of this Act with which it should have complied,

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

(4) Upon an instrument transferring the company to another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the company shall forthwith notify the Registrar of the details and the company shall be deemed to have ceased to be a company incorporated in Samoa from the date when its transfer to that other country or jurisdiction takes effect, and the Registrar shall remove its name from his register: Provided that nothing in this subsection shall-

- (a) prevent such a company from being registered in Samoa to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company incorporated in Samoa; or
- (b) take away or affect the jurisdiction of any Court in Samoa to hear and determine any proceedings commenced therein by or against the company before it ceases to be a company incorporated in Samoa.

(5) Where an international company notifies the Registrar under subsection (4) that an instrument transferring the company to another country or jurisdiction has been executed by the proper officer of the other country or jurisdiction and that notification is false, notwithstanding that the Registrar has removed the name of the company from the register in pursuance of the provisions of that subsection -

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company were still registered under this Act; and
- (b) the company shall be liable to be wound up pursuant to the provisions of this Act as if it were still registered under this Act.

Transfer to domestic company register

210.(1) An international company incorporated under this Act, upon obtaining the approval of the Authority and within 60 days from the date on which that approval is obtained, may apply to the Registrar under the Companies Act, 1955 to be registered as a domestic company under that Act.

(2) An international company shall not apply to the Authority for approval under subsection (1) unless -

- (a) that application is authorised by -
 - (i) the holders of not less than three-quarters of each class of shares in the company, if any and where the company is limited by guarantee to any extent, not less than three-quarters of the guarantee members; and
 - (ii) the holders of not less than three-quarters of the company's debentures, if any, of each class; and

- (b) not less than 28 days before applying to the Authority for such approval, the company has published in Samoa Gazette a notice of its intention to make the application; and
- (c) it lodges with the Authority an affidavit sworn by a director of the company in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.

(3) The Authority shall not give its approval to an international company applying for registration as a domestic company under the Companies Act 1955 unless it is satisfied that -

- (b) The requirements of subsection (2) have been complied with;
 - (a) The intended transfer is unlikely to be detrimental to the rights or proper interests of any of the company's members, debenture holders or creditors; and
 - (b) The company has complied with all the provisions of this Act which it should have complied with,

and the Authority may make its approval conditional upon the company taking such steps as it considers necessary to remedy any failure to comply with any provision of this Act.

(4) The international company shall forthwith notify the Registrar when the company is deemed to have ceased to be a company incorporated under this Act.

Costs before Registrar

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

Security for costs

212. Where an international company is a plaintiff in any court action or other legal proceedings the Court may at any time require sufficient security to be given for costs and stay all proceedings until the security is given.

Disposal of shares of shareholder whose whereabouts are unknown

213.(1) Where by the exercise of reasonable diligence an international company is unable to discover the whereabouts of a registered shareholder for a period of not less than 10 years the company may cause a notice 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 shares, after the expiration of 3 months from the date of the notice, will be liable to be forfeited to the Registrar.

(2) If after the expiration of 3 months from the date of a notice under subsection (1) the whereabouts of a shareholder remains unknown, the company may transfer the shares held by the shareholder in the company to the Registrar and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Registrar; and a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all money

which, at the date of forfeiture was payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such money in respect of the shares.

Power to grant relief

214.(1) In any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, if it appears to the Court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him under this section as it would have had if it had been a Court before which proceedings against him for the negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are -

- (b) officers of an international company;
- (c) persons employed by an international company as auditors, whether or not they are officers of the company;
- (d) experts within the meaning of this Act; and
- (e) all persons including receivers and managers or liquidators who are appointed or directed by the Court or the Registrar to carry out any duty under this Act in relation to an international company.

Irregularities in Proceedings

215.(1) No proceedings under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court or the Registrar is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court or direction of the Registrar and the Court or the Registrar may, if it or he thinks fit, make an order or direction declaring that such proceeding is valid notwithstanding any such irregularity or deficiency.

(2) Without affecting the generality of subsection (1) 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 an international company 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 company or whereby any proceedings at or in connection with any meeting or purported meeting have been rendered ineffective, including the failure to make or lodge any declaration of solvency 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 or direction as it or he thinks fit to rectify or cause to be rectified or to negate 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 or direction satisfy itself or himself that such an order would not do injustice to the company or to any member or creditor thereof, or any other person;
 - (c) where any such order or direction 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, or direction and whether it should be advertised in any newspaper.
- (3) For the purposes of subsection (2), "meeting" in relation to an international company, includes -
- (a) a meeting of the company;
 - (b) a meeting of any class of members of the company;
 - (c) a meeting of the debenture holders or any class of debenture holders or any class of debenture-holders of the company;
 - (d) a meeting of the directors of the company or of any committee of the directors; and
 - (e) a meeting of the creditors or any class of the creditors of the company.
- (4) The Court or the Registrar, whether the company is in process of being wound up or not, may extend or shorten any time for doing any act or taking any proceedings allowed or limited by this Act or any regulations hereunder upon such terms, if any, as the justice of the case may require and any such extension may be ordered although the application for the same is not made until after the time originally allowed or limited.

Translation of instruments

216.(1) Where under this Act an international company is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language the company shall lodge at the same time with the Registrar a certified translation thereof, which shall be authentic for all purposes under this Act. The certified translation may be contained in the body of the original document or instrument or may be contained in a separate document.

(2) Where under this Act an international company is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language the company shall keep at its registered office in Samoa 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 before -

- (a) a diplomatic or consular officer of any country;
- (b) a notary public, justice of the peace or similar person of any country;
- (c) any solicitor in Samoa or similar person of any country; or

- (d) any other person before whom by any law of Samoa affidavits may lawfully be sworn for use in proceedings in any Court in Samoa.

Documents by Electronic Transfer

216A. Where a notice or document is required by this Act to be lodged or filed with the Registrar he may accept a photocopy of the notice or document or a copy by telefax or other electronic means.

Filed Memorandum and Articles

216B.(1) Where this Act requires that the Memorandum and Articles of a company be sent to the Registrar, unless otherwise specifically provided, such documents may be delivered in such manner as the Registrar approves.

(2) A signature required on any document referred to in subsection (1) may be printed or otherwise mechanically or electronically reproduced on the document.

(3) A document with a signature referred to in subsection (2) may be accepted in evidence, notwithstanding any provision to the contrary in the Evidence Ordinance 1961.

Alteration of Documents by the Registrar

216C. The Registrar may alter a notice or document other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document or by the representative of that person.

Retention of Records of Companies Struck Off the Register

216D.(1) The Registrar need not produce any document or other records of an international company that has been struck off the Register, after seven years from the date the company was so struck off the Register.

(2) A trustee company need not retain the records of an international company that has been struck off the Register after seven years from the date the company was so struck off the Register.

Dividends payable from profits only

217. As amended by the International Companies Amendment Act 1991.

Use of Word "Corporation", etc 218.

As amended by the International Companies Amendment Act 1991.

General Penalty Provisions

219.(1) Any person who knowingly and wilfully -

- (a) does or authorises anything which by or under this Act he is forbidden to do; or
- (b) does not do or refuses to do something which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

commits an offence against this Act and, save as hereinafter provided in this section shall be liable on conviction to a fine not exceeding \$500 and in the case of second or subsequent offence to a fine not exceeding \$1,000.

(2) Any person who commits an offence against the provisions, of any part of the provisions, of any one of sections 8, 54, 76 and 193 [Section 241 has been repealed by the International Companies Amendment Act 1991.] shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months or both.

(3) Any person who commits an offence against the provisions, of any one of section 87, 194 and 227 shall be liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or to both in respect of each such offence and for each second or subsequent offence to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

Procedure where none laid down

220. In the event that any act or step is required 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, the Registrar may, in response to an application to him, or on his own motion, give 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.

Regulations

221. The Head of State acting on the advice of Cabinet, may from time to time make regulations 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 the carrying out of, or the giving full effect to, the provisions of this Act and its due administration including all or any of the following particular purposes -

- (a) prescribing forms to be used for the purposes of this Act and the matters to be specified in such forms;
- (b) prescribing forms of applications and other notices under this Act;
- (c) fixing the fees and charges to be paid under this Act and the penalties for breaches thereunder, or delegating the power of fixing such fees, charges and penalties to prescribed persons or bodies; and

- (d) empowering, the employment of non-citizens and non-residents required to provide efficient services for the due administration of this Act, subject to, and on, the following conditions--
 - (i) any person employed as a barrister or a solicitor must obtain a practising certificate under the Law Practitioners' Act 1976.
 - (ii) any person employed as a public accountant must obtain a practising certificate under the Public Accountants Act 1984.
- (e) delegating to the Minister responsible the function of granting such duty and other concessions as shall in the opinion of the said Minister be desirable to facilitate the objectives of the Act.

Rules of court

222. Rules of court concerning proceedings for the winding-up of international companies and foreign companies and for giving effect to the other provisions of this Act may be made under the Judicature Ordinance 1961.

Appeals

223.(1) An appeal shall lie to the Court in respect of any decision, direction or approval made, given or refused by the Registrar in exercise of his powers under any one or more of the sections, subsection, paragraphs and sub-paragraphs of this Act specified hereunder -

- (a) section 54(1);
- (b) section 54(2)(b);
- (c) section 54(2)(c)(ii);
- (d) section 54(3);
- (e) section 55;
- (f) section 78;
- (g) section 83;
- (h) section 127;
- (i) section 129;
- (j) section 137;
- (k) section 177;
- (l) section 197;

- (m) section 215;
- (n) as amended by the International Companies Amendment Act 1991;
- (o) as amended by the International Companies Amendment Act 1991;
- (p) as amended by the International Companies Amendment Act 1991;

(2) Pending the determination of an appeal brought under subsection (1), no step shall be taken consequentially upon such decision, direction, approval, or refusal unless the Court or a Judge or, the Registrar of the Court otherwise orders.

Power of exemption

224.(1) The Authority on application in writing lodged with the Registrar by an international company or a foreign company, may exempt any person, company or class of persons or companies from all or any part of the provisions of this Act; and may, specify such terms and conditions as it thinks fit in respect of any such exemption; and any such exemption may be revoked at any time in like manner.

(2) For the purposes of this section a class of companies may be determined by reference to:-

- (a) the business activities of the company;
- (b) the company's involvement with any trustee company; or
- (c) any other matter as the Authority may determine.

Prohibitions by Authority

225.(1) The Authority, acting on the advice of the Registrar, shall have an absolute right without assigning reasons to issue, by public notice, a direction -

- (a) prohibiting the initial incorporation of any international company or class of companies;
- (b) prohibiting the initial registration of a foreign company; or class of foreign companies
- (c) prohibiting the continuation in Samoa of any company or class of companies incorporated outside Samoa; or.
- (d) directing any international company or foreign company to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.”

(2) A direction made under this section may be revoked or varied by the Authority, acting on the advice of the Registrar.

(3) In making a direction under this section the Authority shall not be required to act judicially; and such direction shall be final.

No action to lie against certain persons

226. No action shall lie against the Government or any statutory body or authority of Samoa, the Head of State, or any Minister, any judge or any public officer in respect of anything done or omitted in exercise or purported exercise by the Head of State or any Minister or any statutory body or authority of Samoa, any Judge or any public officer of its or his functions or duties under this Act.

Enforcement of indemnity

226A. Where an international company provides in its memorandum or articles that any director, secretary or other officer or servant shall have a right of indemnity in respect of costs charges losses damages or expenses incurred that indemnity (if otherwise enforceable) may be sued upon by any person to whom that indemnity is expressed as extending notwithstanding that such person may not be a signatory to the memorandum or articles (as the case may be) and shall be as binding and enforceable as if contained in a deed executed by the company for the benefit of that person.

Secrecy

227.(1) All proceedings, other than criminal proceedings, relating to international companies commenced in any Court either under the provisions of this Act or for the purpose solely of determining the rights or obligation of officers, members or holders of debentures, and any appeal from a decision therein, shall, unless such Court otherwise orders, be heard in camera and no details of the proceedings shall be published by any person without leave of such Court.

(2) Where-

- (a) in any proceedings for winding-up an international company the court is satisfied that the company or any officer thereof has failed to comply with any provision of this Act; or
- (b) an international company or any officer thereof is convicted by any Court of any offence under this Act,

such Court may, if it thinks fit, order that the records and registers of that company are to be deposited with the Registrar and that such records, books and registers and the entries in the Registrar's registers and records relating to that company are to be opened to public inspection.

(3) Any person or entity who, with respect to an international company or a foreign company registered under this Act and whether in Samoa or elsewhere -

- (a) divulges;
- (b) attempts, offers or threatens to divulge; and
- (c) induces or attempts to induce other persons to divulge;
- (d) incites, abets, counsels or procures any person to divulge; or
- (e) is knowingly concerned in the divulging of, any information or communication

in respect of, in relating to or concerning -

- (i) the shareholding in or beneficial ownership of any share or shares in such company;
- (ii) the identity of any member of such a company or the interest (legal or beneficial) of any such member in such a company;
- (iii) the management or officers of such a company;
- (iv) any of the business, financial or other affairs or transactions of such a company;
- (v) the assets or liabilities of such a company; or
- (vi) the contents of any register maintained by such a company,
- (vii) commits an offence against this Act.

(4) Notwithstanding subsection (3) of this section, it shall not be an offence under this section where such information or communication is divulged to the extent reasonably required in the circumstances:

- (a) by an officer of an international company or a foreign company or a trustee company to the Registrar or the Authority for the purpose of complying with the provisions of this Act;
- (b) by an officer of a trustee company to a director of that trustee company, or by a director of a trustee company to the Authority in what he believes are the best interests of Samoa to uphold the integrity of the jurisdiction as an offshore financial centre or to otherwise ensure compliance with this Act;
- (c) by an officer of an international company or a foreign company to any person for the purpose of carrying on the business of the company; provided that the phrase "carrying on the business of the company" shall not include the compliance with any demand or request for information by any foreign government or any court or tribunal of any country other than Samoa where the divulging of the information will, or is likely to, result in the payment of any tax, other penalty or any fine by the company; or
- (d) by an officer of an international company or a foreign company to any foreign government or any court or tribunal of any country other than Samoa but only if and to the extent that the court in Samoa so directs having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or laundering of the proceeds of sale of any prohibited narcotic substances, whether that sale or laundering occurred in Samoa or elsewhere;
- (e) by any person to a liquidator, or to an officer of an international company, foreign company or trustee company in the performance of his duties as an officer;
- (f) by an officer of an international company or a foreign company to a member of the company where all of the directors of that company consent to such disclosure (or otherwise in accordance with section 107 of this Act); and
- (g) by an officer of an international company or a foreign company to any other

person where all of the directors of that company consent to such disclosures;
and

Provided that the Authority may in its absolute discretion prohibit any disclosure of any information permitted by this Act.

- (h) by the Registrar in making available for inspection and copying under the provisions of Section 28(1A), a copy of the company's memorandum and articles of association and any alterations thereto;
- (i) by the Registrar or any public officer or any statutory body or authority of Samoa in vetting, verifying and investigating applicants for all offshore licences and registrations issued by the Government of Samoa pursuant to any offshore finance legislation, including without limiting the generality of the foregoing the International Banking Act 2005, the International Insurance Act 1988 and the Trustee Companies Act 1987.
- (j) by the Registrar or any public officer in making available for inspection an index of company names and their registered offices.

(5) Nothing in this section shall prevent the Court from requiring any person to produce documents or to give evidence in any criminal proceedings or in any civil proceedings alleging fraud or other dishonesty of any facts relevant in such proceedings under the law of Samoa.

(6) In recognition of the desirability of maintaining secrecy in respect of the activities of all international companies and foreign companies registered under this Act, the Authority may do all things which, in its opinion, are necessary to give effect to the provisions of this section.

(7) This section shall apply to every international company and to every foreign company to the extent to which that information relates to any branch of the foreign company in Samoa or any business which it conducts in Samoa or in relation to any person who is resident of Samoa.

No Confiscation

228. There shall be no compulsory acquisition on expropriation of the property of international companies and foreign companies or their investor, situated in Samoa except-

- (a) in accordance with the due process of law;
- (b) for a public purpose defined by law; and
- (c) with payment of compensation as defined by law.

Form of company registers and records

228A.(1) Subject to section 103 of this Act, any register, records, accounts or documents required to be kept by an international company pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that the international company can readily produce legible printed evidence of its content.

(2) Any register, records, accounts or documents required to be kept by the Registrar pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that a legible

printed copy of its content can be produced.”

Asset protection

228B.(1) This section shall only apply to an international company where the articles of that international company state that the section shall so apply.

(2) In this section -

“expropriation” means any act of confiscation, compulsory acquisition, nationalisation or any similar act;

“membership interest” means -

- (a) any interest in a share of an international company; or
- (b) any other interest of a person where that interest arises from or in connection with the fact that the person is a member of an international company.”

“specified person” means the person or persons nominated in the articles of an international company for the purposes of this section; and

“specified event” means any event stated in the articles of an international company to be a specified event in respect of one or more of the members of that international company.

(3) The articles of an international company may provide that on the happening of any specified event (including without limitation where any foreign government expropriates any membership interest of a member of an international company) then the provisions of this section shall apply.

(4) Upon the occurrence of any specified event:

- (a) the membership interest of any member of an international company affected by that event shall automatically vest in the specified person and if more than one specified persons, to those specified persons in the proportions and in the manner stated in the articles of the international company; and
- (b) no other person (including the original owner) shall have any rights in or to the membership interest.

(5) Every holder of a membership interest in an international company shall be entitled to nominate one or more specified persons and if more than one specified person is nominated by a holder of a membership interest, the proportions and manner in which the membership interest shall vest, in each of those specified persons, shall be stated.

(6) A holder of a membership interest in an international company shall be entitled at any time, and from time to time, to nominate or remove a specified person by notice in writing to the international company.

Certificate of good standing

228C.(1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated or registered under this Act is of good standing if the

Registrar is satisfied that:-

- (a) the name of the company is on the Register; and
 - (b) the company has complied with its obligations under the principal Act and has paid all fees, renewal fees and penalties due and payable thereunder.
- (2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether:-
- (a) the company is in the process of being wound up and dissolved; or
 - (b) any proceedings to strike the name of the company off the register have been instituted.
- (3) A certificate of good standing issued by the Registrar under subsection (1) shall be prima facie evidence of the matters contained therein.

PART XII - Shares and Debentures

DIVISION 1 - INTERPRETATION

229. As amended by the International Companies Amendment Act 1991.

DIVISION 2 - PROSPECTUSES

230 - 239. *Repealed*

DIVISION 3 - RESTRICTIONS ON ALLOTMENT

240 - 248. *Repealed*

PART XIII - Application of other Acts

Exemptions and privileges of international companies

249.(1) For the purposes of this section "foreign currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed otherwise than in Samoa, and also includes rights and instruments of title "securities" include shares, stocks, bonds, debentures, debenture stocks, Treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities but does not include bills of exchange or promissory notes.

(2)

Notwithstanding anything contained in any other enactment-

- (a) every international company and every foreign company registered under Part X other than an international bank licensed under the International Banking Act 2005 except where the income is derived by such company in carrying on business in Samoa shall be exempt from the payment of income tax and from the payment of any other direct or indirect tax or impost or stamp duty upon its transactions, contracts, securities and other dealings and upon its profits and gains; and
- (b) every international company and every foreign company registered under Part X shall be exempt from the payment of income tax and from the payment of any other direct or indirect tax or impost in respect of any dividends or earnings of, or upon any interest earned by, such company attributable to or paid upon the shares or securities of any international company or foreign company registered under Part X that are beneficially owned by another international company or by a person who is not a resident of Samoa, except where the income is derived by way of dividend, interest, royalty or any other means of distribution paid by a trustee company from income of that trustee company which is taxable in Samoa.
- (c) no international company or foreign company registered under Part X shall be required to-(i) deposit any money in any public account; or
 - (ii) file any accounts, returns, reports or records other than is required by this Act, and where applicable the International Banking Act 2005 or the International Insurance Act 1988.

(3) There shall be no currency and exchange control restrictions or regulations, and no foreign exchange levy or impost payable, in respect of-

- (a) the taking or sending of any foreign currency or security out of Samoa by an international company or a foreign company registered under Part X other than an international bank licensed under the International Banking Act 2005 or by an officer or employee of such a company for or on behalf of the company, except-
 - (i) where the security is payable in the currency of Samoa and was not issued by an international company; or
 - (ii) where the security or foreign currency is owned or controlled by a natural person resident in Samoa or a domestic company, other than a trustee company.
- (b) the transfer of the interest of any person in any security by an international

company or a foreign company registered under Part X other than an international bank licensed under the International Banking Act 2005 or by an officer or employee of such a company for or on behalf of the company except--

- (i) where the security is payable in the currency of Samoa and was not issued by an international company; or
 - (ii) where such person is a natural person resident in Samoa or a domestic company other than a trustee company.
- (c) the drawing or negotiating of any bill of exchange or promissory note or the transfer of any security or the acknowledgment of any debt or the making of any payment, by an international company or a foreign company registered under Part X other than an international bank licensed under the International Banking Act 2005 or by an officer or employee of such a company for or on behalf of the company -
- (i) as consideration for receiving any payment or acquiring any property elsewhere than in Samoa; or
 - (ii) as consideration for acquiring a right, whether actual or contingent, to receive any payment or to acquire any property elsewhere than in Samoa.
- (d) the creation or transfer of a right, whether actual or contingent, to receive any payment or acquire any property elsewhere than in Samoa or the disposal or otherwise dealings with any money, securities or property held or payable elsewhere than in Samoa by an international company or foreign company registered under Part X other than an international bank licensed under the International Banking Act 2005 or by an officer or employee of such a company for or on behalf of the company, other than-
- (i) as consideration for receiving any payment or acquiring any property in Samoa;
 - (ii) as consideration for acquiring a right, whether actual or contingent, to receive any payment or acquire any property in Samoa; or
- (iii) as consideration for the discharge of a debt payable in Samoa.
- (4) No international company or foreign company registered under Part X shall-
- (a) unless it is an international bank licensed to carry on domestic banking business under the International Banking Act 2005 carry on business with, or acquire any assets from -
 - (i) any natural person ordinarily resident in Samoa; or
 - (ii) any domestic company which is not a trustee company.
 - (b) own an interest in land or real estate situated in Samoa other than a lease referred to in clause (e) of sub-section 5.
 - (c) make any disposition to or grant or settle any property (including shares or debentures) on -

- (i) any natural person ordinarily resident in Samoa; or
 - (ii) any domestic company which is not a trustee company.
- (d) make any disposition or grant or settle any property outside Samoa in the currency of Samoa.
 - (e) carry on banking or trust business, unless it is licensed under an enactment authorising it to carry on that business.
 - (f) carry on business as an insurance or reinsurance company or insurance manager unless it is licensed under an enactment authorising it to carry on that business.
- (5) For the purpose of paragraph (a) of subsection (4) of this section an international company or a foreign company registered under Part X of this Act shall not be treated as carrying on business in Samoa with a domestic company by reason only that:-
- (a) it makes or maintains deposits with a company carrying on banking business in or from within Samoa;
 - (b) it makes or maintain professional contact with solicitors, barristers, accountants, trustee companies, investment advisers or similar persons carrying on business in or from within Samoa.
 - (c) it prepares or maintains books and records within Samoa;
 - (d) it holds meetings of its directors and members in or from within Samoa;
 - (e) it holds a lease of property for use as an office which it has established from which to communicate with members or where books and records of the company are prepared or maintained, or being a licensee under the International Banking Act 2005, from where it maintains and operates its business;
 - (f) it holds shares, or debentures or other securities in another company incorporated or registered under this Act; and
 - (g) shares, debentures or other securities in the company are owned by any company incorporated or registered under this Act.
- (6) If an international company or a foreign company registered under Part X of this Act contravenes sub-section (4) of this section it commits an offence against this Act and is liable on conviction to a fine not exceeding one thousand dollars for every day that the offence has continued and every officer of the company who knowingly permits the contravention is guilty of the same offence and is liable upon conviction to a like fine.
- (7) It shall be an offence against this Act for an international company or a foreign company registered under Part X of this Act, or an officer or employee of such company, to take or send, or cause or permit to be taken or sent out of Samoa, money or securities which are owned or controlled by a natural person ordinarily resident in Samoa or by a domestic company which is not a trustee company.

Exemption of non-resident recipients of income

250. A natural person not resident in Samoa shall not be subject to the imposition of any fee, impost, tax, levy, dues or excise in relation to any income derived by the non-resident person, other than where the

income is derived-

- (a) by that non-resident person in the course of carrying on business in Samoa or through a permanent establishment of the non-resident in Samoa.
- (b) by that non-resident person by way of dividend, interest, royalty or any other means of distribution, paid by a domestic company other than a trustee company.

SCHEDULE 1

(Section 20)

THE POWERS OF AN INTERNATIONAL COMPANY

1. To carry on any business, other than a business which it is prohibited by the Act or the regulations from carrying on, which may seem to the company capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.
2. To enter into or be a party to any transaction or document.
3. To acquire, hold, dispose of or deal with any information or rights or property of any kind.
4. To acquire, hold, dispose of or deal with the whole or any part of the undertaking of any other company, association or business.
5. To dispose of or otherwise deal with the whole or any part of its undertaking or business.
6. To assume any duties, obligations or liabilities.
7. To acquire any rights or interests.
8. To provide or procure provision of any services.
9. To lend to and borrow.
10. To procure its registration or recognition in any place outside Samoa.
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 person in and about its business or the business of any other company or person.
14. To give indemnities and guarantees and obtain indemnities and guarantees.
15. To take out insurance of all kinds whether over the property or rights of the company or not.
16. To promote any other company.
17. To make gifts, donations and wagers which may lawfully be made whether the same may, or may not, be for the purpose of advancing its business.
18. By way of settlement or other dealing or disposition to give the right to a person not a member of the company to share in the whole or any part of its gains or profits to the exclusion of its members provided that in exercising such power no distribution of gains or profits shall be made pursuant to such

settlement disposition or other dealing which would exceed the amount properly distributable as a dividend or properly capable of being returned as capital surplus were such distribution a distribution to some or to all of the members of the company.

19. To do any of the things which it may do in association with any other person or company and as principal or agent or as trustee or for its own benefit.
20. To promote any other business.
21. To distribute any of the property of the company among the members, in kind or otherwise.
22. To give security by charging uncalled capital.
23. To grant a floating charge on the undertaking or property of the company;
24. To procure the company to be registered or recognised as a body corporate in any place out of Samoa.
25. To make provision in connection with the cessation of the whole or part of the business of the company, or of any subsidiary of the company, for the benefit of any subsidiary of the company, for the benefit of employees or former employees of the company or of a subsidiary of the company or for the dependent of such employees or former employees.
26. To do all such things as are incidental or conducive to the exercise of the other powers of the company.
27. 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 Samoa.

SCHEDULE 2

(Section 25)

TABLE A: ARTICLES FOR MANAGEMENT OF AN INTERNATIONAL COMPANY

Interpretation

1. In these Articles words and expressions, except in so far as the context or subject-matter otherwise indicates or requires, shall have the same meaning as in the International Companies Act 1987 and further-
“Secretary” means any person appointed to perform the duties of a secretary of the company; “the Act” means the International Companies Act 1987. “the office” means the registered office of the company in Samoa. “the Seal” means the common seal of the company.

Issue of shares

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

Share warrants

3. No share warrant shall be issued by the company except upon a request in writing by the person whose name is for the time being upon the register of members of the company as the holder of the share or stock in respect of which the share warrant is to be issued, and there shall be no objection that the request was signed by the person making the same before this name was entered in the register as such holder, provided always that a share warrant may be issued upon a request in writing by a person who subscribed the memorandum of the company in respect of one or more of the shares in respect of which he has subscribed the memorandum, notwithstanding the fact that the name of such subscriber has not been and will not be entered in the register of members as a shareholder.
4. No share warrant shall be issued in respect of any shares on which there is any unpaid liability.
5. A request to the company for the issue of a share warrant shall be in such form and authenticated by such statutory declaration or other evidence as to the identity of the person making the same and of his right or title to the share or stock as the directors shall from time to time require and shall be lodged at the office of the company.
6. Before the issue of a share warrant the certificate, if any, then outstanding in respect of the share

intended to be included in it shall be delivered up to the directors.

7. Shares warrants shall be issued under the seal or the branch seal of the company or branch of the company established outside Samoa 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 (provided always that an authentic English translation is provided on the same form) and form as the directors shall think fit.
9. Coupons payable to bearer, or 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; and shall not be payable in Samoa currency.
11. Upon any dividend being declared to be payable upon the shares specified in a share warrant, the directors shall publish an advertisement in any newspaper they shall think fit or otherwise give such notice as they think fit stating the amount per share or per centum payable, the date of payment and the serial number of the coupon to be presented; and thereupon any person presenting and delivering up a coupon of that serial number at the place, or one of the places, stated in the coupon or in the said advertisement, shall be entitled to receive at the expiration of such number of days, not exceeding 30, after so delivering it up as the directors shall from time to time direct the dividend payable on the share certified in the share warrant to which the said coupon shall belong, according to the notice which shall have been given by advertisement or notice.
12. The company shall be entitled to recognise an absolute right in the bearer for the time being of any coupons so advertised aforesaid for payment to such amount of dividend on the share warrant whereto the said coupon shall belong as shall have been as aforesaid declared payable upon presentation and delivery of the coupon and the delivery of such coupon shall be a good discharge to the company accordingly.
13. If any share warrant or coupon be worn out or defaced the directors may, upon the surrender thereof for cancellation, issue a new one in its stead.
14. If any share warrant or coupon be lost or destroyed the directors may, upon the loss or destruction being established to their satisfaction and upon such indemnity being given to the company as they shall think adequate, issue another bearer share warrant or coupon in lieu thereof.
15. In every case provided for by Articles 13 and 14 a fee of \$10.00, exclusive of all expenses attending the investigation of evidence of loss or destruction and of an indemnity to the corporation, shall be paid to the company by the person availing himself of those Articles.
16. No person shall as bearer of a share warrant be entitled to attend or vote, or exercise in respect thereof any of the rights of a member, at any general meeting of the company, or sign any requisition for or aid in calling any general meeting unless 7 days at least before the day appointed for the meeting, in the first case, and unless before the requisition is left at the office, in the second case, 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

Share capital and variation of rights

22. If at any time the share capital is divided into different classes of shares, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may, whether or not the company is being wound up, be varied by special resolution of the company with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meetings shall apply mutatis mutandis, but so that the necessary quorum shall be 2 persons at least holding or representing by proxy one-third of the issued shares of the class and so that any holder of shares of the class present in person or by proxy may demand a poll.

23. The rights conferred upon the holders of shares of any class issued with preferred or other special rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of the further shares ranking equally therewith or in priority thereto.

24. The company may exercise the powers of paying commissions of the kind referred to in section 49 of the Act [Section 49 was repealed by the International Companies Amendment Act 1991.] provided that the rate per centum, or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10 per centum of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per centum of that price, as the case may be, unless the amount or rate of commission proposed to be paid has at least 21 days before payment been notified to all persons entitled to receive notices of general meetings and no such person has objected in writing. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on the issue of shares pay such brokerage as may be lawful.

25. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or unit of a share or, except only as by these Articles or by law otherwise provided, any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

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

27. The company shall have a first and paramount lien on every share for all money, whether presently payable or not, called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares registered in the name of a single person for all money presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The company lien, if any, on a share shall extend to all dividends payable thereon.

28. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

29. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

30. The proceeds of the sale be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on shares

31. The directors may from time to time, in respect of shares having a par value, make calls upon the members in respect of any money unpaid on their shares, whether on account of the nominal value of the shares or by way of premium, and not by the conditions of allotment thereof made payable at fixed times and each member shall, subject to receiving at least 30 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 installments.

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 10 per centum per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.

35. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these Articles be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case on non-payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

36. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

37. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may, until the same would, but for the advance become payable, pay interest at such rate not exceeding, unless the members of the company in general meeting or by writing signed by them shall otherwise direct, 10 per centum 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 of any of his shares other than share warrants 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 company together with such fee not exceeding \$20.00 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 company shall subject to the powers vested in the directors by these Articles register the transferee as a shareholder and retain the instrument of transfer.

40. The directors may decline to register any transfer of shares on which the company has a lien.

Transmission of shares

41. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to this 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.

42. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before this death, bankruptcy or insolvency.

43. If the person so becoming entitled elects to be registered himself he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death insolvency or bankruptcy of the member had not occurred and the notice of transfer were a transfer signed by that member.

44. Where the registered holder of any shares dies or becomes bankrupt or insolvent his personal representative or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights whether in relation to meetings of the corporation, or to voting or otherwise, as the registered holder would have been entitled to if he had not died or become bankrupt or insolvent; and where two or more persons are jointly entitled to any share in consequence of the death or insolvency or bankruptcy of the registered holder they shall, for the purpose of these Articles, be deemed to be joint holders of the share.

Forfeiture of shares

45. If a member fails to pay any call or installment 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 installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

46. The notice shall name a further day, not earlier than the expiration of 30 days from the date of service of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

47. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has

been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

48. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

49. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding remain liable to pay to the company all money which, at the date of forfeiture, was payable by him to the company in respect of the shares, together with interest at the rate of 10 per centum per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of such interest, but his liability shall cease to the extent that the company receives payment of money on respect of the shares.

50. A declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

51. The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

52. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.

53. A company shall not be liable to account to the person whose shares have been forfeited as aforesaid for any consideration received by it on the sale or other disposition of the forfeited shares in excess of the liability of that person to the company and the company shall be entitled to retain any such excess for its own use and benefit but the directors may resolve to pay any such excess over the person whose shares were forfeited or to his personal representative or assigns.

Alteration of capital

54. The company may from time to time by special resolution-

- (a) increase the share capital by such sum to be divided into shares of such amount, or may increase the number of its shares of no-par value to such number, as the resolution shall prescribe; and
- (b) increase its share capital constituted by shares of no-par value by transferring reserves or profits to the stated capital, with or without a distribution of shares, but any new shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original capital.

55. The company may, by special resolution-

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares, or consolidate and reduce the number of the issued shares of no par value;

- (b) increase the number of its issued no-par value share without an increase of its stated capital;
- (c) subdivide its existing shares or any of them into shares of smaller amount than is fixed by its memorandum;
- (d) convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no-par value;
- (e) convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value;
- (f) cancel any shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;
- (g) reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law;
- (h) convert its issued preference shares into shares which can be redeemed.

General Meetings

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

57. Subject to the provisions of the Act and these Articles relating to special resolutions and agreements for shorter notice, 14 days' notice at the least, inclusive of the day for which notice is given specifying the place, the day and the hour of meeting and the general nature of the business to be considered thereat shall be given to such persons as are entitled to receive such notice from the company.

Proceedings at General Meetings

58. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, 1 member holding more than 50 per centum of the issued shares giving the right to attend and vote at general meetings or 2 members present shall be a quorum. For the purposes of this Articles "member" includes a person attending as a proxy or as representing a company which is a member or as representing the committee, trustee or other person having the management of the estate of a person who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law of Samoa relating to mentally-disordered persons.

59. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.

60. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

61. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

62. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by any member present in person, by representative or by proxy. Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

63. If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

64. In the case of an equality of votes, whether on a show of hands or a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall have a second or casting vote.

65. Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or be represented and vote by proxy or by attorney and on a show of hands every person present who is a member or representative of a member shall have one vote, and on a poll every member present in person or by representative shall have one vote for each share he holds.

66. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

67. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons may be represented by and vote, whether on a show of hands or on a poll, by his committee or by his trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by representative or proxy.

68. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

69. No objection shall be realised to the qualification of any voters except at the meeting or adjourned meeting at which the vote object to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

70. The instrument appointing a proxy shall be in writing, in the common or usual form, under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a company, under seal or under the hand of an officer or attorney duly authorised. A proxy may but need not be a member of the company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

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

admit--

..... International Company

I/We,

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

or, failing him,

of , as my/our proxy to vote for me/us on my/our behalf at the general meeting of the

company to be held on the day of

19 , and at any adjournment thereof.

Signed this day of 19 .

*in favour or This form is to be used

against the resolution.

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

72. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the office of the company, or at such other place within Samoa as is specified for that purpose in the notice convening the meeting, not less than 5 days before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 5 days before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

73. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is give, if no intimation in writing of such death, unsoundness of mind, revocation or transfer as aforesaid has been received by the company at its office before the commencement of the meeting or adjourned meeting at which the instrument is used.

74. The bearer of a share warrant shall be entitled to vote only in accordance with article 17.

75. A resolution in writing contain in the one instrument or in several instrument in like form signed by the members, other than bearers of share warrants, holding together more than 75 per centum of the voting rights of the shares having voting rights at a general meeting of the company of which resolution notice has been given in the manner in which notices of general meetings should be given shall be as valid as a resolution or a special resolution passed at a general meeting of the company.

Directors' appointment, etc

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

77. The corporation may from time to time by ordinary resolution increase or reduce the number of directors.

78. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these Articles.

79. The company may by ordinary resolution remove any director and may by ordinary resolution appoint another person in his stead.

80. The remuneration of the directors may be fixed or varied by the company by ordinary resolution and shall be deemed to accrue from day to day; the directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or of any committee of the directors or general meetings of the company or in connection with the business of the company.

81. The directors shall not be required to hold any shares in the company unless the company in general meeting resolves otherwise. A director may be a company whether incorporated in Samoa or elsewhere and may act through a representative or delegate appointed from time to time by written notice lodged with the secretary.

82. The office of director shall become vacant if the director -

- (a) ceases to be director by virtue of the Act;
- (b) within Samoa 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 company; or

Powers and duties of directors

83. The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and incorporating the company and may exercise all such powers of the company as are not, by the Act or by these Articles required to be exercised by the company in general meeting, subject, nevertheless, to any of these Articles and to the provisions of the Act.

84. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the company or of any third party.

85. The directors may exercise all the powers of the company in relation to any seal for use outside Samoa and in relation to branch registers and may provide for the establishment of branches of the company outside Samoa in accordance with the provisions of the Act.

86. The directors may from time to time by power of attorney appoint any company, firm or person or

body or persons to be the attorney or attorneys of the company in accordance with section 29(3) of the Act.

87. All cheques, promissory notes, drafts, bills of exchange and other negotiable instrument, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case maybe, in such manner as the directors from time to time determine.

88. The directors shall cause minutes to be made -

- (a) of all appointments of officers;
- (b) of the names of the directors present at all meetings of the company and of the directors; and
- (c) of all proceedings at all meetings of the company and of the directors.

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

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

Proceedings of directors

90. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. A director may at any time, and the secretary shall on the requisition of a director, summon a meeting of the directors.

91. Subject to 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 a second or casting vote.

92. A director may not vote but may (where the total number of directors is less than 3) be counted in the quorum in respect of any contract or proposed contract with the company in which he is in any way interested or on any matter arising thereout and a contract entered into by the company in which a director is in any way interested shall be reason thereof be voidable; and every director shall be liable to account to the company for any profits realised by such contract or any office of profit held by him by reason of his being a director.

93. Any director with the approval of the directors may appoint any person, whether a member of the company or not, to be 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.

94. The quorum necessary for the transaction of the business of the directors may be fixed by the directors; but until so fixed it shall be one less than the total number of directors unless the total number of directors is less than 3, when the quorum shall be all the directors.

95. The directors may act notwithstanding any vacancy in their body or failure to appoint the total

number of directors fixed by or under these articles but, if and so long as their number is less than the number fixed by or under these articles the necessary quorum of directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purposes.

96. The directors may elect a chairman of their meeting 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 15 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

97. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

98. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting; if no such chairman is elected, or if at any meeting the chairman is not present within 14 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

99. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

100. All acts done by any meeting of the directors or of a committed of directors or by any person acting as a director shall, notwithstanding that it is discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified or had never been qualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

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

Managing directors

102. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment but such appointment shall be automatically determined if the appointee ceases from any cause to be a director.

103. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission or participation on profits, or partly in one way and partly in another, as the directors may determine; subject to confirmation by the company by ordinary resolution at the next general meeting.

104. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

Resident directors

105. The directors shall appoint a resident director of the company for such term and at such remuneration and upon such conditions as the other directors and the resident director agree. The appointment of any such resident director may be revoked by the directors.

Resident secretary

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

Seal

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

Accounts

108. The directors shall cause proper accounting and other records to be kept and shall distribute copies of profit and loss accounts, balance-sheets and such other statements or documents 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 the accounting and other records of the company or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any account or book or paper of the company except as conferred by any written law or authorised by the directors or by the company in general meeting.

Dividends and reserves

109. The directors may declare dividends.

110. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

111. No dividends shall be paid otherwise than out of profits and an unrealised capital surplus arising on the revaluation of unrealised fixed assets shall not be treated as a profit for this purpose. No dividend shall bear interest against the company;

112. The directors may, before declaring any dividend, set aside out of the profits of the company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested in such investments as the directors may from time to time think fit. The directors may also without placing the

same to reserve carry forward any profits which they may think prudent not to divide.

113. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this article as paid on the share. All dividends shall be 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.

114. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

115. Any dividend may be paid wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of the company or of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specified 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 trustee as may seem expedient to the directors.

116. Any dividend, interest or other money payable in cash in respect of registered shares may be paid by cheque or warrant sent through the post directed to the registered 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

117. The company may by authority of a special resolution purchase its own shares in any manner permitted by the Act.

Capitalisation of profits

118. The directors may resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution, amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportion, on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid or partly in the one way and partly in the other.

119. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members

entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices

120. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting, by airmail if the address is outside Samoa, a letter containing the notice and to have been effected 10 days after the date of its posting.

121. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

122. A notice may be given by the company to the persons entitled to a share in consequence of the death, bankruptcy or insolvency of a member by sending it through the post in a prepaid letter, by airmail if the address is outside Samoa addressed to them by name or by the title of representatives of the deceased or assignee or trustee of the bankrupt or insolvent or by a like description at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death, bankruptcy or insolvency had not occurred.

123.(1) Notice of every general meeting shall be given in any manner hereinbefore authorised to -

- (a) every member, other than holders of share warrants, except those members who have not supplied to the company an address for the giving of notices to them;
- (b) every person entitled to a share, other than a share warrant, 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 of the company;

(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 company a statement that notices of general meetings of the company shall be advertised in a particular manner notices of all general meetings shall while any such warrant is outstanding also be given by advertisement in such manner.

Winding-up

124. If the company is wound up the liquidator may divide amongst the members in kind the whole or any part of the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member shall be compelled to accept any

shares or other securities whereon there is any liability.

Indemnity

125. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in 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.

126. The company may, by special resolution, alter the provisions of its memorandum of association, including those with respect to the objects of the company, in accordance with the procedure specified in Section 19 of the Act.

(Section 57) TABLE B: TERMS OF DEBENTURE OF A

COMPANY

1. This Debenture secures the principal sum shown on its face payable in dollars. (And in no circumstances will there be entitlement hereunder to payment in Samoa currency).
2. The principal sum is payable on demand by the Debenture Holder.
3. Until payment this Debenture will carry interest at the rate (if any) shown on the face of this Debenture on the principal sum payable yearly.
4. The company is not entitled to redeem this Debenture without the Holder's consent.
5. The provisions of the of the Articles of the company giving the members or any class of the members of the company the right and power to vote and to demand a poll shall, so far as they relate to the company for the period while this Debenture is unredeemed, be suspended and of no effect for any purpose whatsoever and the provisions contained in the International Companies Act 1987 shall apply.

SCHEDULE 3

(Section 30D)

Additional powers of a limited life international company

1. To sue and be sued, complain and defend, in its name;
2. To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated;
3. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
4. To lend money to and otherwise assist its members, managers and employees;
5. To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other limited liability companies, international or foreign corporations, associations, general or limited partnerships or individuals, or direct or indirect obligations of any government, state, territory, governmental district or municipality;
6. To make contracts and guarantees and incur liabilities, borrow money at such rates of interests as the limited life international company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchisees and income;
7. To lend money for its proper purposes, invest and reinvest its funds and take and hold real property for the payment of funds so loaned or invested;
8. To conduct its business, carry on its operations and have and exercise the powers granted by this Act in any country outside Samoa;
9. To elect or appoint managers, officers, employees and agents of the limited life international company, and define their duties and authority and affix their compensation;
10. To make and alter operating agreements, not inconsistent with its articles of organisation or this Act, for the administration and regulation of the affairs of the limited life international company;
11. To indemnify a member or manager or former member or manager of the limited life international company against expenses actually and reasonably incurred by him or it in connection with the defence of any action, suit or proceeding, civil or criminal, in which he or it is made a party by reason of being or having been such member or manager, except in relation to matters as to which he or it shall be adjudged in the action, suit or proceeding to be liable to the company for negligence or misconduct in the performance of duty or to have received improper personal benefit on account thereof; and to make any other indemnification that is authorised by the articles of organisation or by an article of the operating agreement or resolution adopted by the members after notice;
12. To cease its activities and surrender its certificate of incorporation or registration;
13. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited life international company is incorporated;
14. To become a member of a general partnership, limited partnership, joint venture or similar

association, or any other limited liability company;

15. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, ownership interest bonus plans and option plans, and benefit or incentive plans for any or all of its current or former managers, officers, employees and agents;

16. To make donations for public welfare or for charitable, scientific or education purposes.