NORFOLK **ISLAND**

COMPANIES ACT 1985

[Consolidated as at 28 March 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980]*

_____

TABLE OF PROVISIONS

Page i Table of Provisions

Page 1 *Companies Act 1985*

Page 435 Commencement information

Page 419 Comparative Table of provisions of *Companies Act 1985* and *Companies Act 1981* of the Commonwealth

NORFOLK ISLAND

COMPANIES ACT 1985

_____

TABLE OF PROVISIONS

PART 1 — PRELIMINARY

1. Short title
2. Commencement
3. Administration bound
4. Repeal

PART 2 — DEFINITIONS AND INTERPRETATION

5. Effect of Part
6. Definitions
7. Businesses
8. Professional or business advisers
9. Invitations
10. Offer or invitation to the public
11. Receivers also managers
12. Persons subject to restrictions
13. Meaning of "director"
14. Meaning of "insolvent under administration"
15. Meaning of "officer"
16. Meaning of "financial year"
17. Meaning of "prospectus"
18. References to companies and corporations
19. Matters not shown fairly
20. References to affairs of a corporation
21. Subsidiaries
22. Nature of shareholdings
23. Holding companies
24. Related corporations
25. Ultimate holding companies
26. Wholly-owned subsidiaries
27. Relevant interests in shares

28. Associated persons
29. Deemed ownership of shares in proprietary company

PART 3 — ADMINISTRATION

Division 1 — Registrar and other Officers

30. Registrar of Companies
31. Seal of Registrar

Division 2 — Powers of Inspection

32. Interpretation
33. Registrar may inspect books without charge
34. Power of Registrar to require production of books
35. Power of Magistrate to issue warrant to seize books
36. Offences
37. Copies or extracts of books to be admitted in evidence
38. Privilege
39. Investigation of certain matters

Division 3 — Registration of Auditors and Liquidators

40. Interpretation
41. Companies Auditors Authority
42. Application for registration as auditor or liquidator
43. Registration of auditors
44. Auditor-General deemed to be registered as auditor
44A. Government Auditor taken to be registered as auditor
45. Registration of liquidators
46. Registration of official liquidators
47. Security to be given by liquidators
48. Register of Auditors
49. Registers of Liquidators and Official Liquidators
50. Removal from Register
51. Inspection of Register
52. Notification of certain matters
53. Triennial statements by registered auditors and liquidators
54. Certain persons deemed to be registered
55. Qualified privilege of auditors and other persons
56. Cancellation of registration by request
57. Suspension or cancellation of registration for cause
58. Appeals to Supreme Court

Division 4 — Registers and Registration of Documents

59. Registers
60. Inspection of documents
61. Admissibility of copies
62. Certificates of Registrar
63. Refusal of registration in certain cases
64. Information from lodging party
65. Disposal of documents
66. Court may order lodgment or amendment of documents
67. Relodging of lost registered documents

PART 4 — CONSTITUTION OF COMPANIES

Division 1 — Incorporation

68. Formation of companies
69. Proprietary companies
70. Registration and incorporation
71. Effect of incorporation
72. Membership of holding company
73. Requirements as to memorandum
74. Requirements as to subscribers
75. Signatures of bodies corporate
76. Limited liability

Division 2 — Names

77. Names of particular classes of companies
78. Availability of names
79. Reservation and registration of name of intended company
80. Reservation and registration of proposed new name
81. Reservation and registration of name of intended foreign company or foreign company
82. Reservation and registration of proposed new name of registered foreign company
83. Extension of registration
84. Cancellation of registration
85. Change of name
86. Omission of "Limited" from names of charitable and other companies
87. Revocation of licence
88. Alteration of memorandum or articles

Division 3 — Powers and Status

89. Powers
90. Restrictions on companies
91. Acts not invalid because prohibited
92. Reliance on invalid acts
93. Persons having dealings with companies, etc
94. Certain assumptions not to be made
95. Lodgment of documents not to constitute constructive notice
96. Effect of fraud
97. Change of status
98. Change from public to proprietary company or from proprietary to public company
99. Default in complying with requirements as to proprietary companies
100. General provisions as to alteration of memorandum
101. Alterations of memorandum
102. Cancellation of alterations
103. Lodgment of copies
104. Interpretation
105. Articles of association
106. Adoption of Table A
107. Alteration of articles
108. Memorandum and articles of companies limited by guarantee
109. Operation of memorandum and articles
110. Copies of memorandum and articles
111. Confirmation of contracts and authentication and execution of documents
112. Signatures of officers
113. Appointment of agent or attorney

Business outside Norfolk Island

115. Ratification of contracts made before formation of company
116. Promoter's liability
117. Promoter's liability where contract ratified
118. Consent to exemption from liability
119. Discharge of promoter's liabilities
120. Rights and liabilities to be in substitution for other rights and liabilities
121. Trustees
122. Prohibition of carrying on business with fewer than statutory minimum number of members

PART 5 — PROSPECTUSES

123. Interpretation
124. Prohibition of issue of certain documents in relation to proposed corporations
125. Forms of application for shares or debentures to be attached to prospectus
126. Invitations or offers in relation to borrowing corporation
127. Description as mortgage debenture or mortgage debenture stock
128. Description as debenture or debenture stock
129. Matters to be included in summary
130. Part not to apply to certain corporations
131. Offences
132. Application of certain provisions
133. Documents evidencing indebtedness
134. Registrar may specify manner of description
135. Contents of prospectuses
136. Offences
137. Effect of Part - other liabilities
138. Certain notices, etc, not to be published
139. Certain reports not to be published
140. Evidentiary provisions, etc
141. Retention of over-subscriptions
142. Registration of prospectuses
143. Document containing offer of securities for sale deemed to be prospectus
144. Allotment or issue of securities where prospectus indicates application for quotation on stock market
145. Expert's consent to issue of prospectus
146. Civil liability for untrue statement or non-disclosure
147. Defences to liability
148. Defence available to experts
149. Indemnification of persons incorrectly named
150. Criminal liability for untrue statement or non-disclosure

PART 6 — RESTRICTIONS ON ALLOTMENT OF SHARES AND VARIATION OF CONTRACTS

151. Prohibition of allotment unless minimum subscription received
152. Repayment of subscriptions
153. Allotment voidable at applicant's option
154. Certain conditions void
155. Securities not to issue after 6 months

156. Validity of allotment
157. Liability of directors for contravention
158. Application moneys to be held in trust until allotment
159. Restriction on varying contracts referred to in prospectus

PART 7 — SHARES AND SHARE CAPITAL

Division 1 — General Provisions with Respect to Shares

160. Returns as to allotments
161. Differences in calls and payments, reserve liability, etc
162. Share warrants
163. Restrictions on application of capital
164. Power to pay brokerage or commission
165. Issue of shares at a discount
166. Issue of shares at a premium
167. Issue of redeemable preference shares
168. Alteration of share capital
169. Validation of improper issue of shares
170. Special resolution for reduction of share capital
171. Objections by creditors
172. Confirmation of reduction
173. Retrospective effect
174. Certificate of Registrar
175. Deemed alteration of memorandum
176. Liability of members where creditor unaware of proceedings
177. Offences
178. Certain benefits not reduction of capital
179. Unlimited companies
180. Registrar to be informed of special rights
181. Rights of holders of classes of shares
182. Rights of holders of shares
183. Rights of classes of members
184. Rights of holders of preference shares to be set out in memorandum or articles
185. Register of options
186. Options over unissued shares
187. Payment of interest out of capital in certain cases

Division 2 — Company Dealing in its Shares

188. References to acquisition
189. Company financing dealings in its shares

190. Order for compensation
191. Exclusions from operation of subsection 189(1)
192. Further exclusions from operation of subsection 189(1)
193. Authorisation by special resolution
194. Substantial compliance
195. Application to Court opposing assistance
196. Directors' duties not affected
197. Existing contracts
198. Consequences of company financing dealings in its shares, etc
199. Certificates of compliance
200. Persons with knowledge
201. Effect of certificates
202. Offence in relation to certificates
203. Power to grant relief
204. Certain contracts, etc, to be deemed to be related
205. Effect on other rights and liabilities

PART 8 — NOTIFICATION OF SHAREHOLDINGS IN COMPANIES

206. Transfers to be notified
207. Notification of interests in shares
208. Notification of change in interests
209. Notification by person who ceases to be shareholder
210. References to operation of section 27
211. Registrar may extend period for giving notice
212. Company not to be taken to have notice
213. Offences
214. Powers of Court with respect to defaulting shareholders

PART 9 — DEBENTURES

215. Definitions
216. Register of debenture holders and copies of trust deed
217. Branch registers
218. Specific performance of contracts
219. Perpetual debentures
220. Re-issue of redeemed debentures
221. Qualifications of trustee for debenture holders
222. Retirement of trustees
223. Contents of trust deed
224. Power of Court in relation to certain irredeemable debentures
225. Duties of trustees

226. Power of trustees to apply to the Court for directions, etc
227. Obligations of borrowing company
228. Further charges
229. Profit and loss accounts
230. Consolidated accounts
231. Notice to comply
232. Application of certain sections
233. Registrar to be notified of failure to lodge accounts
234. Audit may be dispensed with or limited
235. Value of trading stock
236. Obligation of guarantor corporation to furnish information
237. Loans to be immediately repayable in certain events
238. Invitations or offers by certain corporations
239. Liability of trustees for debenture holders

PART 10 — TITLE TO AND TRANSFER OF SECURITIES

240. Nature of shares
241. Numbering of shares
242. Certificate to be evidence of title
243. Duplicate common seal
244. Loss or destruction of certificates
245. Instruments of transfer
246. Registration of transfer at request of transferor
247. Notice of refusal to register transfer
248. Remedy for refusal to register transfer or transmission
249. Certification of transfers
250. Duties of company with respect to issue of certificates

PART 11 — REGISTRATION OF CHARGES

251. Interpretation and application of Part
252. Charges required to be registered
253. Lodgment of notice of charge and copy of instrument
254. Acquisition of property subject to charge
255. Registration of documents relating to charges
256. Priorities of charges
257. Certain charges void against liquidator or official manager
258. Court may extend period
259. Avoidance of certain later charges
260. Rights of third parties without notice
261. Assignment and variation of charges

262. Satisfaction of, and release of property from, charges
263. Lodgment of notices, offences, etc
264. Company to keep documents relating to charges and register of charges
265. Certificates
266. Power of Court to rectify Register
267. Exemption from compliance with certain requirements
268. Charges created before commencement of this Act

PART 12 — MODIFICATION OF CERTAIN PROVISIONS

269. Banking business
270. Powers of Registrar

PART 13 — MANAGEMENT AND ADMINISTRATION

Division 1 — Office and Name

271. Registered office of company
272. Notice of address of registered office and office hours
273. Publication of name

Division 2 — Directors and other Officers

274. Directors
275. Restrictions on appointment or advertisement of director
276. Qualifications of directors
277. Vacation of office
278. Appointment of directors to be voted on individually
279. Validity of acts of directors and secretaries
280. Removal of directors
281. Age of directors
282. Certain persons not to manage corporations
283. Court may order persons not to manage corporations
284. Disclosure of interests in contracts, property, offices, etc
285. Duty and liability of officers
286. Loans to directors
287. Exceptions
288. Liability of directors and officers
289. Enforcement of guarantee or security
290. Sections not exclusive
291. Register of directors' shareholdings, etc
292. General duty to make disclosure
293. Payment for loss of or retirement from, office
294. Provisions as to assignment of office

295. Disclosure of directors' emoluments
296. Company secretaries
297. Indemnification of officers and auditors
298. Register of directors, principal executive officers and secretaries
299. Returns by companies
300. Offences
301. Registrar may require certain notices
302. Registrar's certificates
303. Registrar of disqualified company directors and other officers

Division 3 — Meetings and Proceedings

304. Statutory meeting and statutory report
305. Annual general meeting
306. Convening of general meeting on requisition
307. Convening of meetings
308. Articles as to right to demand a poll
309. Quorum, chairman, voting, etc, at meetings
310. Proxies
311. Power of Court to order meeting
312. Circulation of members' resolutions, etc
313. Special resolutions
314. Resolutions requiring special notice
315. Resolutions of exempt proprietary companies
316. Lodgment with the Registrar of copies of certain resolutions and agreements
317. Resolutions at adjourned meetings
318. Minutes of proceedings
319. Inspection of minute books

Division 4 — Register of Members

320. Register and index of members
321. Closing and inspection of register
323. Consequences of default by agent
323. Power of Court to rectify register
324. Personal representative may be registered as owner of shares
325. Power of company to obtain information as to beneficial ownership of its shares
326. Powers of Court
327. Branch registers

PART 14 — ANNUAL RETURNS

328. Annual return
329. Auditor's statement
330. Exemption of certain companies

PART 15 — INSPECTION OF RECORDS

331. Inspection of records
332. Disclosure of information

PART 16 — ACCOUNTS AND AUDIT

Division 1 — Preliminary

333. Interpretation
334. Dormant corporations
335. Application of approved accounting standards
336. Interpretation of accounting standards
337. Power of Registrar to require copy of accounts or group accounts

Division 2 — Accounts

338. Accounts to be kept
339. Financial years of grouped companies
340. Profit and loss account, balance-sheet and group accounts
341. Directors' reports
342. Directors of holding company to obtain all necessary information
343. Relief from requirements as to accounts and reports
344. Members of company entitled to balance-sheet, etc
345. Accounts and reports to be laid before annual general meeting
346. Registrar may require lodgment of accounts, etc
347. Failure to comply

Division 3 — Audit

348. Qualifications of auditors
349. Registrar may approve person as auditor
350. Auditors not to disqualify themselves
351. Exempt proprietary company need not appoint auditor in certain circumstances
352. Appointment of auditors
353. Nomination of auditors
354. Removal and resignation of auditors
355. Effect of winding up on office of auditor

356. Fees and expenses of auditors
357. Powers and duties of auditors as to reports on accounts
358. Obstruction of auditor
359. Special provisions relating to borrowing and guarantor corporations

PART 17 — SPECIAL INVESTIGATIONS

360. Interpretation and application
361. Application for carrying out of investigation
362. Investigations
363. Conduct of investigations
364. Investigation of affairs of related corporations
365. Powers of inspectors
366. Examination of officers
367. Officer failing to comply with requirement of this Part
368. Record of examination
369. Admissibility of record of examination in evidence in proceedings against person examined
370. Admissibility in other proceedings
371. Weight of evidence
372. Credibility of person who answered questions
373. Determination of objection to admissibility of question and answer
374. Admissibility of certain evidence
375. Delegation by inspector
376. Reports of investigations
377. Provisions relating to reports
378. Registrar's powers in respect of books
379. Privileged communications
380. Expenses of investigation
381. Registrar may order payment
382. Forfeiture of security
383. Concealing, etc, of books
384. Power of Registrar to make certain orders
385. Offences in relation to orders
386. Application for winding up

PART 18 — ARRANGEMENTS AND RECONSTRUCTIONS

387. Interpretation
388. Power to compromise with creditors and members
389. Compromise or arrangement binding in certain circumstances
390. Two or more meetings

391. Approval of compromise or arrangement
392. Disqualification of certain persons
393. Appointment under repealed laws
394. Application of other provisions
395. Operation of Court order
396. Annexure of order to constituent documents
397. Directors to arrange for reports
398. Court may restrain proceedings
399. Information as to compromise with creditors or members
400. Provisions for facilitating reconstruction and amalgamation of corporations
401. Acquisition of shares of dissenting shareholders
402. Consideration to be held in trust
403. Notification of appointment of scheme manager
404. Court may require report

PART 19 — OPPRESSIVE OR UNJUST CONDUCT

405. Remedy in cases of oppression or injustice

PART 20 — RECEIVERS AND MANAGERS

406. Application of Part
407. Interpretation
408. Power to appoint receiver void in certain circumstances
409. Disqualification for appointment as receiver
410. Liability of receiver
411. Powers of receiver
412. Duties of receiver with respect to bank accounts and accounting records
413. Reports by receiver
414. Court may direct Receiver to make report
415. Prosecution of delinquent officers and members
416. Supervision of receivers
417. Application for directions
418. Power of Court to fix remuneration of receivers
419. Receiver to enjoy qualified privilege in certain circumstances
420. Notification of appointment of receiver
421. Statement that receiver appointed
422. Provisions as to information where receiver appointed
423. Receiver may require reports
424. Receiver may inspect books
425. Accounts of receivers

426. Payments of certain debts in priority to claims under a floating charge
427. Enforcement of duty of receiver to make returns

PART 21 — OFFICIAL MANAGEMENT

428. Interpretation
429. Power of company to call meeting of creditors to appoint official manager
430. Requirements as to meeting
431. Offences
432. Statement of affairs to be submitted to meeting of creditors
433. Power to adjourn meeting
434. Power of creditors to place company under official management
435. Appointment of committee of management
436. Notice of appointment and address of official manager
437. Effect of resolution
438. Six-monthly meetings of creditors and members
439. Stay of proceedings
440. Power to extend period of official management
441. Extension of period of official management
442. Appointment of official manager not to affect appointment and duties of auditor
443. Duties of the official manager
444. Undue preferences in the case of official management
445. Application and disposal of property during official management
446. Official manager may apply to Court for direction
447. Certain provisions applicable to official management
448. Power of Court to terminate official management and give directions
449. Resolution to place company under official management effective, subject to appeal
450. Lodgment of office copy of Court order
451. Termination of appointment and release of official manager
452. Vacancy in office of official manager
453. Transitional period
454. Meeting to determine appointment of official manager
455. Residual duties of official manager
456. Expenses of official manager
457. Discharge from liability
458. Order of release
459. Powers of Court

460. Notification that corporation is under official management
461. Functions of committee of management and appointment of deputy official manager

PART 22 — WINDING UP

Division 1 — Preliminary

462. Powers of Court cumulative
463. Modes of winding up
464. Liability as contributories of present and past members
465. Nature of liability of contributory
466. Contributories in case of death or insolvency

Division 2 — Winding Up by the Court

Subdivision A — General

467. Application for winding up
468. Circumstances in which company may be wound up by Court
469. Commencement of winding up by the Court
470. Payment of preliminary costs, etc
471. Powers of Court on hearing of application
472. Avoidance of dispositions of property, attachment, etc
473. Application to be *lis pendens*
474. Certain notices to be lodged
475. Effect of winding up order

Subdivision B — Liquidators

476. Power of Court to appoint official liquidator
477. General provisions as to liquidators
478. Custody and vesting of property
479. Statement of affairs to be submitted to liquidator
480. Preliminary report by liquidator
481. Powers of liquidator
482. Settlement of list of contributories and application of property
483. Exercise and control of liquidator's powers
484. Release of liquidator and dissolution of company
485. Orders for release or dissolution

Subdivision C — General Powers of Court

486. Power to stay or terminate winding up
487. Delivery of property to liquidator
488. Appointment of special manager
489. Claims of creditors and distribution of property

490. Inspection of books by creditors and contributories
491. Power to arrest absconding contributory
492. Delegation to liquidator of certain powers of Court

Division 3 — Voluntary Winding Up

Subdivision A — General

493. Limitation on right to wind up voluntarily
494. Circumstances in which company may be wound up voluntarily
495. Commencement of winding up
496. Effect of voluntary winding up
497. Declaration of solvency

Subdivision B — Provisions applicable only to Members' Voluntary Winding Up

498. Liquidators
499. Duty of liquidator to call creditors' meeting in case of insolvency
500. Proceedings at meeting

Subdivision C — Provisions applicable only to Creditors' Voluntary Winding Up

501. Meeting of creditors
502. Proceedings at meeting
503. Adjournment of meeting
504. Liquidators
505. Execution and civil proceedings

Subdivision D — Provisions applicable to every Voluntary Winding Up

506. Distribution of property of company
507. Appointment of liquidator
508. Removal of liquidator
509. Review of liquidator's remuneration
510. Validity of transactions, etc
511. Powers and duties of liquidator
512. Power of liquidator to accept shares, etc, as consideration for sale
513. Annual meeting of creditors
514. Final meeting and dissolution
515. Binding of arrangement on creditors
516. Application to Court to have questions determined or powers exercised
517. Costs

Division 4 — Provisions applicable to every Mode of Winding Up

Subdivision A — General

518. Interpretation
519. Books to be kept by liquidator

520. Disqualification of liquidators
521. Reports by liquidator
522. Liquidators to enjoy qualified privilege in certain circumstances
523. Supervision of liquidators
524. Notice of appointment and address of liquidator
525. Regulations relating to money, etc, received by liquidator
526. Liquidator's accounts
527. Liquidator to make good defaults
528. Notification that a corporation is in liquidation
529. Books of company
530. Investment of surplus funds on general account
531. Unclaimed moneys to be paid to Administration
532. Expenses of winding up where property insufficient
533. Resolutions passed at adjourned meetings
534. Meetings to ascertain wishes of creditors or contributories

Subdivision B — Committees of Inspection

535. Convening of meeting for appointment of committee of inspection
536. Proceedings of committee of inspection
537. Vacancies in committee of inspection
538. Member of committee not to accept extra benefit
539. Powers of Court where no committee of inspection

Subdivision C — Proof and Ranking of Claims

540. Interpretation
541. Provable debts
542. Insolvent companies
543. Computation of debts
544. Debts proved to rank equally except as otherwise provided
545. Priority payments
546. Debts due to employees
547. Debts of a class to rank equally
548. Advances in respect of wages and leave of absence
549. Priority of employees' claims over floating charges
550. Insurance against liabilities to third parties
551. Provisions relating to injury compensation
552. Power of Court to make orders in favour of certain creditors

Subdivision D — Effect on other Transactions

553. Undue preference
554. Effect of floating charge

555. Liquidator's right to recover in respect of certain transactions
556. Disclaimer of onerous property
557. Executions, attachments, etc, before winding up
558. Duties after receiving notice of application

Subdivision E — Offences

559. Prosecution of delinquent officers and members

Subdivision F — Dissolution

560. Power of Court to declare dissolution of company void
561. Power of Registrar to deregister defunct company
562. Registrar to act as representative of defunct company in certain events
563. Outstanding property of defunct company to vest in Administration
564. Disposal of outstanding interests in property

565. Liability of Administration as to property vested in Administration
566. Accounts

Division 5 — Foreign Companies

567. Powers and functions in Norfolk Island of liquidators of foreign companies

Division 6 — Winding Up of Bodies other than Companies

568. Application
569. Winding up of bodies to which this Division applies
570. Contributories in winding up
571. Power of Court to stay or restrain proceedings

Division 7 — Miscellaneous

572. Outstanding property of defunct body formed outside Norfolk Island

PART 23 — INVESTMENT COMPANIES

573. Interpretation
574. Restriction on borrowing by investment companies
575. Restriction on investments of investment companies
576. Restriction on underwriting by investment companies
577. Special requirements as to articles and prospectus
578. Investment company not to hold shares in other investment companies
579. Investment company not to speculate in commodities
580. Balance-sheets and accounts
581. Investment fluctuation reserve
582. Offences

PART 24 — CORPORATIONS ACTING AS TRUSTEE

583. Notification that corporation is acting as trustee
584. No constructive notice of terms of trust
585. Liability of directors for debts

PART 25 — FOREIGN COMPANIES

586. Interpretation
587. Power to hold land
588. Unregistered foreign company not to establish place of business or carry on business in Norfolk Island
589. Registered office of registered foreign company
590. Agents
591. Notice to be filed where documents, etc, altered
592. Balance-sheets and other documents
593. Publication of name, etc, of foreign company
594. Cessation of business, etc
595. Registrar may question company as to carrying on business
596. Obligation to lodge documents
597. Winding up or dissolution
598. Official management
599. Duties of liquidator appointed by Court
600. Disposal of proceeds of liquidation
601. Restriction on use of certain names
602. Branch register of shares
603. Registration of shares in branch register
604. Removal of shares from branch register
605. Index of members and inspection and closing of branch registers
606. Branch register to be evidence
607. Certificate as to shareholding
608. Offences

PART 25A — ADMINISTRATION COMPANIES

Division 1 — Preliminary

608A. Interpretation
608B. Role of Government Auditor

Division 2 — Annual report and related obligations

608C. Annual Report
608D. Audit of relevant subsidiary's financial statements

Division 3 - Other reporting obligations

608E. Interim reports

608F. Minister to be notified of significant events

608G. Keeping Minister informed

608H. Corporate plan

Division 4 - Miscellaneous

608I. Compliance with general policies of the government

608J. Notices to Assembly

608K. Interaction with other provisions

PART 26 — MISCELLANEOUS

609. Service of documents on company

610. Service of documents on registered foreign company

611. Other modes of service

612. Address of registered office, principal office, etc

613. Vesting of property

614. Parts of dollar to be disregarded in determining majority in value of creditors, etc

615. Rounding off

616. Irregularities

617. Costs

618. Disposal of securities if whereabouts of holder unknown

619. Power to grant relief

620. Directions with respect to meetings ordered by the Court

621. Appeals from decisions of Registrar, receivers and liquidators

622. Power of Registrar to intervene in proceedings

623. Examination of persons concerned with corporations

624. Orders against persons concerned with corporations

625. Civil proceedings not to be stayed

626. Form and evidentiary value of books

627. Inspection of books

628. Location of books kept on computers, etc

629. Location of registers

630. Translations of documents

631. Certificate of incorporation conclusive evidence

632. Admissibility of books in evidence

633. Admissibility of documents as evidence

634. Court may compel inspection

635. Non-application of rule against perpetuities to certain schemes

636. Fees
637. Application of fees and other moneys
638. Local companies
639. False information

PART 27 — OFFENCES

640. Time for institution of criminal proceedings
641. Restriction on offering shares, securities for subscription or purchase
642. Application and interpretation of sections 643 and 646
643. Offences by officers of certain companies
644. Offences where proper accounts not kept
645. Offences relating to incurring of debts or fraudulent conduct
646. Powers of Court in respect of offences
647. Certain rights not affected
648. Inducement to be appointed liquidator or official manager
649. Falsification of books
650. Frauds by officers
651. Court may disqualify person from acting as director, etc, in certain circumstances
652. Registrar may order persons not to manage corporations
653. False or misleading statements
654. False information, etc
655. Dividends payable from profits only
656. Restriction on use of word “Limited”
657. Restriction on use of word “Proprietary”
658. Reciprocity in relation to offences
659. Offences committed partly in and partly out of Norfolk Island
660. General penalty provisions
661. Penalty notices
662. Continuing offences
663. Officers and other persons in default
664. Imprisonment
665. Power of Court to prohibit payment or transfer of moneys, securities or other property
666. Injunctions
667. Power of Court to punish for contempt

PART 28 — RULES AND REGULATIONS

668. Rules
669. Regulations

PART 29 — TRANSITIONAL PROVISIONS

670. Application
671. General provision
672. Particular provisions
673. Resolution of difficulties in application of transitional provisions

SCHEDULE 1 — Enactments repealed
SCHEDULE 2 — Order of priority of registrable charges

NORFOLK ISLAND

Companies Act 1985

An Act relating to companies.

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Companies Act 1985*.

Commencement

2. This Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

Administration bound

3. This Act binds the Administration and, so far as the legislative powers of the Legislative Assembly permit, this Act also binds the Crown in each of its capacities.

Repeal

4. The enactments specified in Schedule 1 are repealed.

PART 2 — DEFINITIONS AND INTERPRETATION

Effect of Part

5. A provision of this Part has effect except in so far as a contrary intention appears in this Act in relation to that provision or a contrary intention arises in relation to that provision by necessary intendment.

Definitions

6. In this Act —

"accounting records" includes —

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and

(b) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

"annual general meeting", in relation to a company, means a meeting of the company required to be held by section 305;

"annual return" means the return required to be made by Part XIV and includes a document accompanying the return;

"articles" means articles of association;

"bankers books" means —

(a) books of a banking corporation, including documents used in the ordinary business of a banking corporation;

(b) orders for the payment of money, bills of exchange, cheques and promissory notes in the possession or under the control of a banking corporation; and

(c) securities or documents of title to securities in the possession or under the control of a banking corporation, whether by way of pledge or otherwise;

"banking corporation" means —

(a) a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or

(b) a bank constituted by or under a law of the Commonwealth or of a State or of a Territory other than Norfolk Island;

"books" includes a register or other record of information, accounts or accounting records, however compiled, recorded or stored, and also includes a document;

"borrowing company" means a company (not being a banking corporation) that is or will be under a liability to repay money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the company or to an offer to the public of debentures of the company for subscription or purchase;

"branch register" means —

(a) in relation to a company - a branch register of members of the company kept pursuant to section 327; or

(b) in relation to a foreign company - a branch register of members of the company kept pursuant to section 602;

"business day" means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Norfolk Island;

"certified" means —

(a) in relation to a copy of or extract from a document - certified by a statement in writing to be a true copy of or extract from the document; or

(b) in relation to a translation of a document - certified by a statement in writing to be a correct translation of the document into the English language;

"charge" means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;

"chargee" means the holder of a charge and includes a person in whose favour a charge is to be given or executed pursuant to an agreement, whether upon demand or otherwise;

"company" means a company that is incorporated or is to be deemed to be incorporated under this Act or under the repealed laws;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by the memorandum to the respective amounts that the members undertake to contribute to the property of the company in the event of its being wound up;

"company limited by shares" means a company formed on the principle of having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them;

"contributory" means —

(a) in relation to a company —

(i) a person liable as a member or past member to contribute to the property of the company in the event of its being wound up;

(ii) being a company having a share capital - a holder of fully paid shares in the company; and

(iii) before the final determination of the persons who are contributories by virtue of subparagraphs (i) and (ii) - a person alleged to be such a contributory; and

(b) in relation to a body corporate to which Division 6 of Part XXII applies —

(i) a person who is a contributory by virtue of section 570; and

(ii) before the final determination of the persons who are contributories by virtue of subparagraph (i) - a person alleged to be such a contributory;

"corporation" means a body corporate, whether formed or incorporated in or outside Norfolk Island, and includes a company and a foreign company but does not include —

(a) a body corporate that is incorporated in Australia or in an external Territory (other than Norfolk Island) and is a public authority or an instrumentality or agency of the Crown in any of its capacities; or

(b) a corporation sole;

"the Court" means the Supreme Court;

"creditors' voluntary winding up" means a winding up under Division 3 of Part 22, other than a members' voluntary winding up;

"debenture" includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a corporation in respect of money that is or may be deposited with or lent to the corporation, whether constituting a charge on property of the corporation or not, but does not include —

(a) a document that merely acknowledges the receipt of money where, in respect of the money, the corporation issues, in compliance with section 126, a document as mentioned in by subsection (2) of that section and complies with the other requirements of that section;

(b) a document issued or executed by a banking corporation in the ordinary course of its banking business, being a document that evidences or acknowledges indebtedness of the corporation arising in the ordinary course of that business;

(c) an order for the payment of money, bill of exchange or cheque;

(d) a promissory note having a face value of not less than $50,000; or

(e) for the purposes of the application of this definition to a provision of this Act in respect of which the regulations provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents - that document or a document included in that class of documents, respectively;

"deed" includes an instrument having the effect of a deed;

"document" includes —

(a) a paper or other material on which there is writing or printing or on which there are marks, symbols or perforations that have a meaning for a person who is qualified to interpret them; and

(b) a disc, tape or other article from which sounds, images or messages are capable of being reproduced,

and, without limiting the generality of the foregoing, also includes —

(c) a summons, order of a court or other legal process; and

(d) a notice, memorandum or report;

"emoluments" means the amount or value of any money, consideration or benefit given, directly or indirectly, to a director of a corporation in connection with the management of affairs of the corporation or of a holding company or subsidiary of the corporation, whether as a director or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred or paid in connection with the business of the corporation;

"executive officer", in relation to a corporation, means a person, by whatever name called and whether or not he is a director of the corporation, who is concerned, or takes part, in the management of the corporation;

"exempt proprietary company" means a proprietary company —

(a) no share in which is to be deemed to be owned by a public company; and

(b) no member of which is a public company;

"expert", in relation to a matter, means a person whose professional or other qualifications give authority to a statement made by him in relation to that matter;

"filed" means filed under this Act or under the repealed laws;

"floating charge" includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge;

"foreign company" means —

(a) a body (including a society or association) formed or incorporated outside Norfolk Island, not being —

(i) a corporation sole; or

(ii) a body corporate that is a public authority or an instrumentality or agency of the Crown in any of its capacities; or

(b) an unincorporated society, association or other body formed outside Norfolk Island that does not have its head office or principal place of business in Norfolk Island;

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

"industrial instrument" means —

(a) a contract of employment; or

(b) a law, award, order, determination or agreement relating to terms or conditions of employment;

"injury compensation" means compensation payable under a law relating to workers' compensation;

"issue" includes circulate, distribute and disseminate;

"leave of absence" means long service leave, extended leave, recreation leave, annual leave, sick leave or any other form of leave of absence from employment;

"legal practitioner" means a barrister or solicitor;

"limited company" means a company limited by shares or by guarantee or both by shares and by guarantee;

"listed corporation" means a corporation that has been admitted to the official list of a stock exchange and has not been removed from that official list;

"lodged" means lodged under this Act or under the repealed laws;

"machine-copy", in relation to a document, means a copy of the document made by a machine in which, or by a process by which, an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

"marketable securities" means debentures, stocks, shares or bonds of a Government, of a local government authority or of a corporation, association or society, and includes a right or option in respect of shares in a corporation;

"members' voluntary winding up" means a winding up under Division 3 of Part 22 where a declaration has been made and lodged pursuant to section 497;

"memorandum" means memorandum of association;

"minerals" means minerals in any form, whether solid, liquified or gaseous and whether organic or inorganic;

"minimum subscription", in relation to shares offered to the public for subscription or for which the public are invited to subscribe, means the amount stated in the prospectus relating to the offer or invitation pursuant to subsection 135 (3) as the minimum amount that, in the opinion of the directors, must be raised by the issue of the shares;

"negative", in relation to a document, means a transparent negative photograph used or intended to be used as a medium for reproducing the contents of the document, and includes a transparent photograph made from surface contact with the original negative photograph;

"nominee corporation" means a corporation whose principal business is the business of holding marketable securities as a trustee or nominee;

"notice" means a notice in writing;

"official liquidator" means a person registered as an official liquidator under Division 3 of Part 3;

"official manager" means a person appointed as an official manager under Part 21;

"prescribed" means prescribed by this Act, by the regulations or by the rules;

"principal executive officer", in relation to a company, means the principal executive officer of the company for the time being, by whatever name called, and whether or not he is a director;

"principal register", in relation to a company, means the register of members of the company kept pursuant to section 320;

"profit and loss account" includes income and expenditure account, revenue account or other account that shows the results of the business of a corporation for a period and, if the corporation concerned is engaged in the development or exploration of natural resources, also includes an operations account or a like account and a development account or a like account;

"promoter", in relation to a prospectus issued by or in connection with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of a relevant portion of the prospectus but does not include a person by reason only of his acting in the proper performance of the functions attaching to his professional capacity or to his business relationship with a promoter of the corporation;

"proprietary company" means —

(a) a company that, immediately before the commencement of this Act, was a proprietary company under the repealed laws;

(b) a company incorporated as a proprietary company pursuant to this Act; or

(c) a company converted into a proprietary company pursuant to this Act,

but does not include a company that has ceased to be a proprietary company;

"public company" means a company other than a proprietary company;

"registered" means registered under this Act or under the repealed laws;

"registered company auditor" means a person who is registered as an auditor, or is to be deemed to be registered as an auditor, under this Act and, in relation to a corporation that is not a company, includes a person qualified to act as the auditor of the corporation under the law of the place in which the corporation was formed;

"registered foreign company" means a foreign company that is registered under Part 25;

"registered liquidator" means a person who is registered as a liquidator, or is to be deemed to be registered as a liquidator, under this Act;

"Registrar" means the person holding office as Registrar of Companies under this Act;

"related corporation", in relation to a corporation, means a corporation that is to be deemed to be related to the first-mentioned corporation by virtue of section 24;

"relative", in relation to a person, means the spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;

"the repealed laws" means the enactments repealed by this Act;

"reproduction", in relation to a document, means a machine-copy of the document or a print made from a negative of the document;

"resolution" means a resolution other than a special resolution;

"resolution for voluntary winding up" means a special resolution as mentioned in section 494;

"rules" means rules of the Court;

"securities", in relation to a corporation or proposed corporation, means —

(a) shares in, or debentures of, the corporation; and

(b) a unit in such a share or debenture;

"share" means share in the share capital of a corporation and includes stock except where a distinction between stock and shares is expressed or implied and "shareholder" has a corresponding meaning;

"sheriff" includes a person charged with the execution of a writ or other process of a court;

"special resolution" has the meaning given to that expression by section 313;

"statutory meeting" means the meeting referred to in section 304;

"statutory report" means the report referred to in section 304;

"stock exchange" has the same meaning as in the *Companies Act 1981* of the Commonwealth;

"transparency", in relation to a document, means —

(a) a developed negative or positive photograph of the document (in this definition referred to as an original photograph) made, on a transparent base, by means of light reflected from, or transmitted through, the document;

(b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph; or

(c) one of a series of copies of an original photograph where —

(i) the first of the series was made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b); and

(ii) each succeeding copy in the series was made, in the same manner, from a preceding copy in the series;

"unit", in relation to a share, debenture or other interest, means a right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever name called, and includes an option to acquire such a right or interest in the share, debenture or other interest;

"voting share", in relation to a body corporate, means an issued share in the body corporate that confers a right to vote, not being a right to vote that is exercisable only in one or more of the following circumstances:

(a) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;

(b) upon a proposal to reduce the share capital of the body corporate;

(c) upon a proposal that affects rights attached to the share;

(d) upon a proposal to wind up the body corporate;

(e) upon a proposal for the disposal of the whole of the property, business and undertaking of the body corporate;

(f) during the winding up of the body corporate;

"wages", in relation to a company, means amounts payable to or in respect of an employee of the company (whether the employee is remunerated by salary, wages, commission or otherwise) under an industrial instrument, including amounts payable by way of allowance or reimbursement but not including amounts payable in respect of leave of absence.

Businesses

7. A reference in this Act to a person carrying on business, or carrying on a business, includes a reference to a person carrying on business, or carrying on a business, respectively —

(a) in any case - otherwise than for profit; or

(b) in the case of a body corporate - otherwise than for the profit of the members or corporators of the body corporate.

Professional or business advisers

8. For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the directors or the body corporate.

Invitations

9. For the purposes of this Act —

(a) a reference to an invitation to do an act or thing includes a reference to an invitation to make an offer to do that act or thing;

(b) a reference to an invitation to the public to subscribe for or purchase debentures of a corporation includes a reference to an invitation to the public to deposit money with or lend money to a corporation; and

(c) a reference to an offer to the public of debentures of a corporation for subscription or purchase includes a reference to an offer to the public by a corporation to accept money that is deposited with, or money that is lent to, the corporation.

Offer or invitation to the public

10. (1) A reference in this Act to, or to the making of, an offer to the public or to, or to the issuing of, an invitation to the public includes a reference to, or to the making of, an offer to a section of the public or to, or to the issuing of, an invitation to a section of the public, respectively, whether selected as clients of the person making the offer or issuing the invitation or in some other manner and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the invitation is issued.

(2) For the purposes of subsection (1), if an offer or invitation is made in good faith and —

(a) is an offer or invitation to enter into an underwriting agreement;

(b) is made or issued to a person whose ordinary business is to buy or sell shares or debentures, whether as principal or agent;

(c) is made or issued to existing members or debenture holders of a corporation and relates to shares in, or debentures of, that corporation; or

(d) is made or issued to existing members of a company in connection with a proposal referred to in section 512 and relates to shares in that company,

the offer or invitation shall not be taken to be an offer or invitation to the public.

Receivers also managers

11. (1) For the purposes of this Act, a receiver of a corporation or of property of a corporation shall be deemed to be also a manager if the receiver manages affairs of the corporation or has power under the terms of his appointment to manage affairs of the corporation.

(2) A reference in this Act to a receiver of a corporation or of property of a corporation includes a reference to a person who is both a receiver and a manager of the corporation or of property of the corporation.

Persons subject to restrictions

12. For the purposes of this Act, a person is subject to a restriction if —

(a) the person is or becomes prohibited, without leave of the Court, or without leave of a court of a State or of a Territory other than Norfolk Island, from being a director or promoter of a corporation or from being concerned in or taking part in the management of a corporation;

(b) the person is or becomes prohibited as mentioned in section 282, 283 or 651 or in a law of a State or of a Territory other than Norfolk Island that corresponds with any of those sections; or

(c) there is in force in respect of the person a notice under section 652 or under a provision of a law of a State or Territory other than Norfolk Island that corresponds with that section.

Meaning of "director"

13. In this Act, "director", in relation to a corporation, includes —

(a) a person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;

(b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

(c) in the case of a foreign company —

(i) a member of the committee of management, council or other governing body of the company;

(ii) a person occupying or acting in the position of member of the committee of management, council or other governing body of the company, by whatever name called and whether or not validity appointed to occupy, or duly authorised to act in, the position; and

(iii) a person in accordance with whose instructions the members of the committee of management, council or other governing body of the company are accustomed to act.

Meaning of "insolvent under administration"

14. In this Act, "insolvent under administration" means a person who —

(a) under the *Bankruptcy Act 1966* of the Commonwealth, is a bankrupt in respect of a bankruptcy from which he has not been discharged; or

(b) under the law of a country other than Australia has the status of an undischarged bankrupt;

and includes —

(c) a person who has executed a deed of arrangement under Part 10 of the *Bankruptcy Act 1966* of the Commonwealth or the corresponding provisions of a country other than Australia where the terms of the deed have not been fully complied with; and

(d) a person whose creditors have accepted a composition under Part 10 of the *Bankruptcy Act 1966* of the Commonwealth or the corresponding provisions of the law of a country other than Australia where a final payment has not been made under that composition.

Meaning of "officer"

15. In this Act, "officer", in relation to a corporation, includes —

(a) a director, secretary, executive officer or employee of the corporation;

(b) a person who is both a receiver and manager of property of the corporation appointed under a power contained in an instrument;

(c) an official manager or deputy official manager of the corporation;

(d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or persons,

but does not include —

(f) a receiver who is not also a manager; or

(g) a receiver, manager or liquidator appointed by the Court.

Meaning of "financial year"

16. In this Act, "financial year" means —

(a) in relation to a company incorporated under the repealed laws —

(i) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 305 as to the holding of annual general meetings of the company) resolve, commencing at the expiration of the period in respect of which the last profit and loss account laid before the company at an annual general meeting before the commencement of this Act was made out or, if no profit and loss account was so made out, on the date of incorporation of the company; and

(ii) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 305 as to the holding of annual general meetings of the company) resolve, commencing at the expiration of the previous financial year of the company;

(b) in relation to a company incorporated under this Act —

(i) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 305 as to the holding of annual general meetings of the company) resolve, commencing on the date of incorporation of the company; and

(ii) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 305 as to the holding of annual general meetings of the company) resolve, commencing at the expiration of the previous financial year of the company; and

(c) in relation to a corporation incorporated outside Norfolk Island —

(i) if a profit and loss account of the corporation is required, under the law of the place where the corporation is incorporated, to be made out in respect of a particular period - that period; or

(ii) in a case to which subparagraph (i) does not apply - a period in respect of which a profit and loss account of the corporation is made out.

Meaning of "prospectus"

17. In this Act, "prospectus" means —

(a) where the expression is used in relation to subscribing for shares in or debentures of, or units of shares in or units of debentures of, a corporation - a written notice, circular or other instrument inviting applications or offers from the public to subscribe for, or offering to the public for subscription, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation;

(b) where the expression is used in relation to the purchase of shares in or debentures of, or units of shares in or units of debentures of, a corporation - a written notice, circular or other instrument inviting applications or offers from the public to purchase, or offering to the public for purchase, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation;

(c) where the expression is used in relation to shares in or debentures of, or units of shares in or units of debentures of, a corporation otherwise than as mentioned in paragraphs (a) and (b) - a written notice, circular or other instrument inviting applications or offers from the public to subscribe for a purchase, or offering to the public for subscription or purchase, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation;

(d) where the expression is used in relation to a corporation otherwise than as mentioned in paragraphs (a), (b) and (c) - a written notice, circular or other instrument inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation; or

(e) in any other case where the expression is used - a written notice, circular or other instrument inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, a corporation.

References to companies and corporations

18. The express references in this Act to companies, corporations or bodies corporate do not imply that references to persons do not include references to companies, corporations or bodies corporate.

Matters not shown fairly

19. (1) Where, by this Act, accounts, a balance sheet, a profit and loss account or other statement or document is required to show certain matter fairly and that matter, as shown, is, in a material particular, false or, in the form and context in which it appears, misleading, then the accounts, balance sheet, profit and loss account, other statement or document shall be taken not to show that matter fairly.

(2) Subsection (1) does not affect the generality of the expression "show fairly" or similar expressions.

References to affairs of a corporation

20. A reference in this Act to affairs of a corporation includes a reference to —

(a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

(b) in the case of a corporation that is a trustee (but without limiting the generality of paragraph (a)) - matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(c) the internal management and proceedings of the corporation;

(d) an act or thing done (including a contract made and transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —

(i) a receiver or manager was in possession of, or had control over, the whole or part of the property of the corporation;

(ii) the corporation was under official management;

(iii) a compromise or arrangement made between the corporation and another person or other persons was being administered; or

(iv) the corporation was being wound up, and, without limiting the generality of the preceding provisions of this paragraph, any conduct of such a receiver or manager, of an official manager or deputy official manager of the corporation, of a person administering such a compromise or arrangement or of a liquidator or provisional liquidator of the corporation;

(e) the ownership of shares in, or debentures of, the corporation;

(f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

(g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or to influence materially the policy of the corporation;

(h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in or debentures of the corporation; and

(i) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, a matter referred to in any of the preceding paragraphs.

Subsidiaries

21. (1) For the purposes of this Act, a corporation is, subject to section 22, a subsidiary of another corporation if —

(a) that other corporation —

(i) controls the composition of the board of directors of the first-mentioned corporation;

(ii) is in a position to cast, or to control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned corporation; or

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

(b) the first-mentioned corporation is a subsidiary of a corporation that is that other corporation's subsidiary (including a corporation that is that other corporation's subsidiary by another application or other applications of this paragraph).

(2) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by another corporation, the composition of a corporation's board of directors shall be taken to be controlled by another corporation where that other corporation, by the exercise of some power exercisable, whether with or without the consent or concurrence of any other person, by that other corporation, can appoint or remove all or a majority of the directors.

(3) For the purposes of subsection (2), if —

(a) a person cannot be appointed as a director without the exercise in his favour by the other corporation of such a power; or

(b) a person's appointment as a director is a necessary consequence of his being a director or other officer of the other corporation,

the other corporation shall be deemed to have power to make such an appointment.

Nature of shareholdings

22. For the purposes of section 21, in determining whether one corporation is a subsidiary of another corporation —

(a) a share held or power exercisable by the other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), a share held or power exercisable —

(i) by a person as a nominee for the other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary that is concerned only in a fiduciary capacity,

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

(c) a share held or power exercisable by a person by virtue of the provisions of a debenture of the corporation first-mentioned in section 21, or of a trust deed for securing an issue of such debentures, shall be disregarded; and

(d) a share held or power exercisable by, or by a nominee for, the other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary, as the case may be, includes the lending of money and the share is held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the other corporation or its subsidiary.

Holding companies

23. A reference in this Act to the holding company of another company or corporation is a reference to a corporation of which that company or corporation is a subsidiary.

Related corporations

24. Where a corporation —

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation; or

(c) is a subsidiary of the holding company of another corporation,

the first-mentioned corporation and the other corporation shall, for the purposes of this Act, be deemed to be related to each other.

Ultimate holding companies

25. For the purposes of this Act, a corporation is the ultimate holding company of another corporation if —

(a) the other corporation is a subsidiary of the first-mentioned corporation; and

(b) the first-mentioned corporation is not itself a subsidiary of a corporation.

Wholly-owned subsidiaries

26. For the purposes of this Act, a corporation is a wholly-owned subsidiary of another corporation if none of the members of the first-mentioned corporation is a person other than —

(a) that other corporation;

(b) a nominee of that other corporation;

(c) a subsidiary of that other corporation, being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or

(d) a nominee of such a subsidiary.

Relevant interests in shares

27. **(1)** Subject to this section, a person has a relevant interest in a share in a body corporate —

(a) for the purposes of section 325, if that share is a voting share and that person has power —

(i) to exercise, or to control the exercise of, the right to vote attached to that share; or

(ii) to dispose of, or to exercise control over the disposal of, that share; and

(b) for the purposes of sections 286 to 292 (inclusive), if that person has power to dispose of, or to exercise control over the disposal of, that share.

(2) For the purposes of paragraph (1)(b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(3) It is immaterial for the purposes of this section whether the power of a person —

(a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b) to dispose of, or exercise control over the disposal of, a share,

is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to a restraint or restriction, and such a power exercisable jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(4) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, by means of, in breach of, or by revocation of trusts, agreements, arrangements, understandings and practices or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(5) Without limiting the generality of subsections (1), (3) and (4), where a body corporate has, or is to be deemed by this section to have, power —

(a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b) to dispose of, or to exercise control over the disposal of, a share,

and —

(c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or

(d) a person has a controlling interest in the body corporate,

that person shall, for the purposes of this section, be deemed to have the same power in relation to that share as the body corporate has or is to be deemed to have.

(6) Where a body corporate has, or is to be deemed by this section (otherwise than by this subsection) to have, power —

(a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b) to dispose of, or to exercise control over the disposal of, a share,

a person (in this subsection referred to as the "relevant person") shall, for the purposes of this section, be deemed to have the same power in relation to that share as the body corporate has or is to be deemed to have if —

(c) the relevant person has;

(d) a person associated with the relevant person has;

(e) persons associated with the relevant person together have; or

(f) the relevant person and a person or persons associated with the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate.

(7) Where a person —

(a) has entered into an agreement with respect to an issued share;

(b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or

(c) has an option with respect to an issued share,

and, on performance of the agreement, enforcement of the right or exercise of the option, that person would have a relevant interest in the share, he shall, for the purposes of this section, be deemed to have that relevant interest in the share.

(8) For the purposes of this section, where, by reason of the operation of subsection (7), a body corporate is to be deemed to have a relevant interest in a share and —

(a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of, or the control of the exercise of, a right to vote attached to that share, or in relation to the disposal of, or the exercise of control over the disposal of, that share;

(b) a person has a controlling interest in the body corporate; or

(c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate,

that person shall be deemed to have a relevant interest in that share.

(9) A relevant interest in a share shall be disregarded for the purposes of sections 286 to 292 (inclusive) and 325 —

(a) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the first-mentioned person;

(b) if the relevant interest is that of a person who has it by reason of his holding a prescribed office;

(c) if the share is subject to a trust and the relevant interest is that of a trustee and —

(i) a beneficiary is to be deemed, by subsection (7), to have a relevant interest in the share by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that subsection; or

(ii) the trustee is a bare trustee; or

(d) if the ordinary business of the person who has the relevant interest includes dealing in securities and he has authority to exercise his powers as the holder of the relevant interest only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of the other person in the ordinary course of business.

(10) For the purposes of subsection 9(c), a trustee shall not be taken to be a bare trustee by reason only that he is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

(11) A relevant interest in a share shall be disregarded for the purposes of Part 8, if the relevant interest is that of a person who has it by reason only of his having been appointed as a proxy or representative to vote at a particular meeting of members, or of a class of members, of a corporation, not being an appointment in return for the making of which the person or person associated with the person provided valuable consideration.

(12) A relevant interest in a share shall not be disregarded by reason only of —

(a) its remoteness; or

(b) the manner in which it arose.

(13) The Regulations may provide that relevant interests, or the interests included in particular classes of relevant interests, in shares in bodies corporate, or in bodies included in particular classes of bodies corporate, shall, in such circumstances and subject to such conditions (if any) as are specified in the Regulations, be disregarded for the purposes of such of the provisions of this section as are specified in the Regulations.

(14) A reference in this section to the prescribed percentage is a reference to 20% or, where a lesser percentage is prescribed, is a reference to that lesser percentage.

Associated persons

28. (1) A reference in this Act to a person associated with another person is a reference —

(a) if the other person is a corporation - to —

(i) a director or secretary of the corporation;

(ii) a corporation that is related to the other person; or

(iii) a director or secretary of such a related corporation;

(b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation - to a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied —

(i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, the voting power attached to a share in the corporation;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or

(iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of shares in the corporation in accordance with the directions of the other of them;

(c) to a person in concert with whom the other person is acting, or proposes to act, in respect of the matter to which the reference relates;

(d) to a person with whom the other person is, or proposes to become, associated, whether formally or informally, in some other way in respect of the matter to which the reference relates; or

(e) if the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, some other act or thing, with a view to becoming associated with a person as mentioned in paragraph (b), (c) or (d) - to the last-mentioned person.

(2) A person shall not be taken to be associated with another person by virtue of paragraph (1)(b), (c), (d) or (e) by reason only that —

(a) either of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;

(b) without limiting the generality of paragraph (a), where the ordinary business of either of those persons includes dealing in securities - specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business; or

(c) the person has appointed the other person as a proxy or representative to exercise, at a meeting of members or of a class of members of a company, votes attached to shares of which the person is the holder and the relevant interest of the other person in those shares that arises by reason of his appointment as a proxy or representative would be disregarded under subsection 27(9) by reason of subsection 27(11).

Deemed ownership of shares in proprietary company

29. (1) For the purposes of the definition of "exempt proprietary company" in section 6, a share in a proprietary company shall be deemed to be owned by a public company if a beneficial interest in the share is held, directly or indirectly, by —

(a) a public company;

(b) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a public company; or

(c) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by —

(i) a public company; or

(ii) another proprietary company a beneficial interest in a share in which is held, directly or indirectly, otherwise than by a natural person.

(2) For the purposes of subsection (1) but without limiting the generality of that subsection —

(a) a reference in that subsection to a public company includes a reference to a foreign company other than a foreign company that (whether or not Part 25 applies to it) is a foreign company of a kind referred to in subsection 592(7);

(b) a reference in that subsection to a public company or to a proprietary company does not include a reference to a company in respect of which a licence under section 86 is in force; and

(c) a person (including a corporation) shall be deemed to hold a beneficial interest in a share —

(i) if that person, either alone or together with some other person or other persons, is entitled (otherwise than as trustee for, on behalf of, or on account of, another person) to receive, directly or indirectly, a dividend in respect of the share or to exercise, or to control the exercise of, a right attaching to the share; or

(ii) if that person, being a corporation holds a beneficial interest in a share in some other corporation that holds, or a subsidiary of which holds, a beneficial interest in the first-mentioned share.

PART 3 — ADMINISTRATION

Division 1 — Registrar and other Officers

Registrar of Companies

30. (1) For the purposes of this Act, the Administrator shall appoint a Registrar of Companies and an Assistant Registrar of Companies.

(2) The Administrator may appoint an Acting Assistant Registrar of Companies.

(3) The Registrar, the Assistant Registrar and an Acting Assistant Registrar hold office during the pleasure of the Administrator.

(4) The Assistant Registrar has all the powers and shall perform all the duties and exercise all the powers of the Registrar under this Act during the absence of the Registrar from duty or from Norfolk Island or during a vacancy in the office of Registrar.

(5) Without limiting the operation of subsection (4), the Assistant Registrar may, subject to any directions of the Registrar, at any time exercise a power or perform a function of the Registrar.

(6) An Acting Assistant Registrar may, subject to any directions of the Registrar or of the Assistant Registrar, exercise a power or perform a function of the Registrar —

(a) the official seal of the Registrar under this Act or under the repealed laws; and

(b) during a vacancy in the office of Assistant Registrar; or

(c) while the Assistant Registrar is absent from duty or from Norfolk Island.

(7) Where, under this Act, the exercise of a power or the performance of a function is dependent upon the opinion, belief or state of mind of the Registrar in relation to a matter, the power may be exercised or the function performed by the Assistant Registrar or Acting Assistant Registrar upon his opinion, belief or state of mind in relation to the matter.

Seal of Registrar

31. (1) The Registrar shall have an official seal in accordance with a design determined by the Administrator and published in the Gazette.

(2) All Courts, judges and persons acting judicially shall take judicial notice of —

(a) the official seal of the Registrar under this Act or under the repealed laws; and

(b) the signature of a person who holds or has held the office of Registrar of Companies, Assistant Registrar of Companies or Acting Assistant Registrar of Companies, whether under this Act or under the repealed laws, and of the fact that that person held the office concerned at a relevant time.

Division 2 — Powers of Inspection

Interpretation

32. In this Division —

"books" includes bankers books;

"premises" includes a structure, building, aircraft, vehicle, vessel or place (whether built upon or not) and a part of such a structure, building, aircraft, vehicle, vessel or place.

Registrar may inspect books without charge

33. (1) A book that is required by this Act to be kept by a company or by a registered foreign company shall be open for inspection without charge by the Registrar or by a person authorised by the Registrar for the purposes of this section.

(2) An authorisation under subsection (1) may be of general application or may be limited as specified in the instrument of authorisation.

Power of Registrar to require production of books

34. (1) The Registrar may, at any time, by notice in writing, give a direction —

(a) to —

(i) a corporation; or

(ii) a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, a corporation (including a corporation that is in the course of being wound up or has been dissolved), requiring the production, at a time and place specified in the direction, of such books relating to affairs of the corporation as are specified in the direction; or

(b) to a person requiring the production, at a time and place specified in the direction, of books relating to affairs of a corporation (including a corporation that is in the course of being wound up or has been dissolved) that are in the custody or under the control of the person.

(2) The Registrar may authorise a person, on producing (if required to do so) evidence of his authority —

(a) to require by notice in writing a corporation to produce to the authorised person forthwith or, if a time and place at which the books are to be produced are specified in the notice, at that time and place, such books relating to affairs of the corporation as are specified by the authorised person;

(b) to require by notice in writing a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, a corporation (including a corporation that is in the course of being wound up or has been dissolved) to produce to the authorised person forthwith such books relating to affairs of the corporation as are specified by the authorised person; or

(c) to require by notice in writing a person to produce to the authorised person forthwith books relating to affairs of a corporation (including a corporation that is in the course of being wound up or has been dissolved) that are in the custody or under the control of the person.

(3) An authorisation under subsection (2) may be of general application or may be limited as specified in the instrument of authorisation.

(4) Where the Registrar, or a person authorised by the Registrar, requires the production of a book under this section and a person has a lien on the book, the production of the book does not affect the lien.

(5) Where a person exercises a power under this section to require another person to produce a book —

(a) if the book is produced, the first-mentioned person —

(i) may take possession of the book and may make copies of, or take extracts from, the book;

(ii) may require the other person, or a person who was party to the compilation of the book, to make a statement providing an explanation that the person concerned is able to provide as to a matter relating to the compilation of the book or as to a matter to which the book relates;

(iii) may retain possession of the book for such period as is necessary to enable the book to be inspected, and copies of, or extracts from, the book to be made or taken, by or on behalf of the Registrar; and

(iv) during that period shall permit a person who would be entitled to inspect the book if it were not in the possession of the first-mentioned person to inspect the book at all reasonable times; or

(b) if the book is not produced, the first-mentioned person may require the other person —

(i) to state, to the best of his knowledge and belief, where the book may be found; and

(ii) to identify the person who, to the best of his knowledge and belief, last had custody of the book and to state, to the best of his knowledge and belief, where that person may be found.

(6) Where this section confers a power on a person to require another person to produce a book relating to affairs of a corporation, the first-mentioned person also has power to require the other person (whether or not he requires the other person to produce a book and whether or not a book is produced pursuant to such a requirement), so far as the other person is able to do so, to identify property of the corporation and explain the manner in which the corporation has kept account of that property.

(7) A person is not subject to any liability by reason that the person complies with a direction given, or purporting to have been given, under subsection (1) or with a requirement made, or purporting to have been made, under subsection (2).

(8) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up or was a body corporate that has been dissolved, to making that requirement of a person who is or has been an officer of the body corporate.

(9) For the purposes of this section, "officer", in relation to a body corporate, includes —

(a) a director, secretary, executive officer or employee of the body corporate;

(b) a receiver, or a manager, of the property or of a part of the property of the body corporate;

(c) an official manager or a deputy official manager of the body corporate;

(d) a liquidator or provisional liquidator of the body corporate; and

(e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

Power of Magistrate to issue warrant to seize books

35. (1) If a Magistrate is satisfied, on information on oath or affirmation laid by the Registrar or by a person authorised in writing by the Registrar, that there are reasonable grounds for suspecting that there is on particular premises in Norfolk Island a book the production of which has been required under section 34 and which has not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any member of the Police Force of Norfolk Island together with any other person named or described in the warrant —

(a) to enter those premises , with the use of such force as is necessary for the purpose);

(b) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises;

(c) to take possession of, or secure against interference, a book that appears to be the book the production of which was so required; and

(d) to deliver a book possession of which is so taken into the possession of a person authorised by the Registrar to receive it.

(2) An information laid for the purposes of subsection (1) shall state that the person laying the information suspects that there is on particular premises in Norfolk Island a book the production of which has been required under section 34 and which has not been produced in compliance with that requirement and shall specify the grounds on which the person so suspects.

(3) Where a Magistrate issues a warrant under subsection (1), he shall state on the information laid under that subsection —

(a) which of the grounds set out in the information he has relied on to justify the issue of the warrant; and

(b) particulars of any other grounds relied on by him to justify the issue of the warrant.

(4) There shall be stated in a warrant issued under this section —

(a) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(b) a date, being a date not later than 7 days after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) Nothing done under this section affects a lien that a person has on a book.

(6) Where, under this section, a person takes possession of a book, or secures a book against interference, that person or a person to whose possession the book was delivered under paragraph (1)(d) —

(a) may make copies of, or take extracts from, the book;

(b) may require a person who was party to the compilation of the book to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the book or as to any matter to which the book relates;

(c) may retain possession of the book for such period as is necessary to enable the book to be inspected, and copies of, or extracts from, the book to be made or taken, by or on behalf of the Registrar; and

(d) during that period shall permit a person who would be entitled to inspect the book if it were not in the possession of the first-mentioned person to inspect the book at all reasonable times.

(7) The powers conferred by this section are in addition to, and are not affected by, any other power conferred by law.

Offences

36. **(1)** A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made under section 34 or 35.

Penalty: 100 penalty units or imprisonment or both.

(2) A person shall not, in purported compliance with a requirement made under section 34 or 35, furnish information or make a statement that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment or both.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(4) A person shall not, without reasonable excuse, obstruct or hinder —

(a) the Registrar or another person in the exercise of a power under section 34; or

(b) a person executing a warrant issued under section 35.

Penalty: 100 penalty units or imprisonment or both.

(5) The occupier or person in charge of premises that a person enters pursuant to a warrant issued under section 35 shall provide the last-mentioned person with all reasonable facilities and assistance for the effective exercise of his powers under the warrant.

Penalty: 25 penalty units or imprisonment or both.

(6) A person is not excused from making a statement providing an explanation as to a matter relating to the compilation of a book or as to a matter to which a book relates pursuant to a requirement made of him in accordance with section 34 or 35 on the ground that the statement might tend to incriminate him but, where the person claims before making a statement that the statement might tend to incriminate him, the statement is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(7) Subject to subsection (6), a statement made by a person in compliance with a requirement made under section 34 or 35 may be used in evidence in a criminal or civil proceeding against the person.

Copies or extracts of books to be admitted in evidence

37. **(1)** Subject to this section, in a legal proceeding (whether under this Act or otherwise), a copy of or extract from a book relating to affairs of a corporation is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Privilege

38. **(1)** Where —

(a) the Registrar, or a person authorised by the Registrar, makes a requirement under section 34 or 35 of a legal practitioner in respect of a book; and

(b) the book contains a privileged communication made by or on behalf of or to the practitioner in his capacity as a legal practitioner,

the practitioner is entitled to refuse to comply with a requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under official management or in the course of being wound up, the official manager or the liquidator agrees to the practitioner complying with the requirement.

(2) Where the practitioner so refuses to comply with a requirement, he shall forthwith furnish, in writing, to the Registrar or authorised person —

(a) if he knows the name and address of the person to whom or by or on behalf of whom the communication was made - that name and address; and

(b) sufficient particulars to identify the book, or the part of the book, containing the communication.

Penalty: 10 penalty units or imprisonment or both.

(3) Where —

(a) under section 34 or 35, the Registrar, or a person authorised by the Registrar, requires a legal practitioner to make a statement providing an explanation as to a matter relating to the compilation of a book or as to a matter to which a book relates; and

(b) the practitioner is not able to make that statement without disclosing a privileged communication made by or on behalf of or to the practitioner in his capacity as a legal practitioner,

the practitioner is entitled to refuse to comply with the requirement, except to the extent that he is able to comply with the requirement without disclosing a privileged communication referred to in paragraph (b), unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under official management or in the course of being wound up, the official manager or the liquidator agrees to the legal practitioner complying with the requirement.

(4) Where the practitioner so refuses to comply with the requirement, he shall forthwith furnish, in writing, to the Registrar or authorised person —

(a) if he knows the name and address of the person to whom or by or on behalf of whom the communication was made - that name and address; and

(b) if the communication was made in writing - sufficient particulars to identify the document containing the communication.

Penalty: 10 penalty units or imprisonment or both.

Investigation of certain matters

39. Where the Registrar believes on reasonable grounds that a person has committed an offence under this Act, the Registrar may make such investigation as he thinks expedient for the due administration of this Act.

Division 3 — Registration of Auditors and Liquidators

Interpretation

40. In this Division, "the Authority" means the Companies Auditors Authority.

Companies Auditors Authority

41. (1) For the purpose of this Act there shall be a Companies Auditors Authority, who shall be a natural person appointed by the Minister.

(2) The functions of the Authority are to effect and control the registration of company auditors and liquidators.

(3) The Authority holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment and on such terms and conditions (including terms and conditions as to remuneration and allowances) as the Minister determines.

(4) An Authority whose term of appointment has expired is eligible for re-appointment.

(5) If an Authority —

(a) becomes an insolvent under administration or makes an assignment of his remuneration for the benefit of his creditors;

(b) is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more; or

(c) becomes of unsound mind,

the Minister shall, by notice published in the *Gazette*, declare that the office of the Authority is vacant and, upon the publication of the notice, the office becomes vacant.

(6) An Authority may resign his office by writing under his hand delivered to the Minister.

(7) Where —

(a) an Authority is about to become absent from Norfolk Island or unavailable to perform the functions of his office; or

(b) there is a vacancy in the office,

the Minister may appoint a person to act in the office while the occupant of the office is so absent or unavailable or while there is a vacancy in the office.

(8) The Minister may at any time terminate an appointment under subsection (7).

(9) A person appointed under subsection (7) —

(a) has all the powers and functions of the Authority; and

(b) holds office on such terms and conditions (including terms and conditions as to remuneration and allowance) as the Minister determines.

(10) Subsections (5) and (6) apply to a person who is acting in the office of the Authority as they apply to the Authority.

(11) Notice of an appointment, or of the termination of an appointment, under this section shall be published in the Gazette.

(12) A notice may be given to or served on the Authority and an application may be made to the Authority —

(a) by posting it to him in care of the Registrar; or

(b) by delivering it at the office of the Registrar.

Application for registration as auditor or liquidator

42. (1) A natural person may make an application to the Authority for registration as —

(a) an auditor;

(b) a liquidator; or

(c) a liquidator of a specified corporation, being a corporation that is being or is to be wound up under this Act.

(2) The application shall be made in writing, shall contain the prescribed information and shall be lodged with the Registrar.

Registration of auditors

43. (1) Subject to this section, where an application for registration as an auditor is made under section 42 before the expiration of 6 months after the date of commencement of this Act by a person who was, immediately before that date, registered as a company auditor under the repealed laws, the Authority shall grant the application and register the applicant as an auditor unless the Authority is satisfied that the applicant is not a fit and proper person to be registered as an auditor.

(2) If the Authority is so satisfied, the Authority shall refuse the application.

(3) Subject to this section, where an application for registration as an auditor (not being an application to which subsection (1) applies) is made under section 42, the Authority shall grant the application and register the applicant as an auditor if —

(a) the applicant —

(i) is a member of The Institute of Chartered Accountants in Australia, of the Australian Society of Accountants or of some other prescribed body;

(ii) holds a degree, diploma or certificate from a prescribed university or other prescribed institution in Australia or New Zealand and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Authority to represent a course of study in accountancy (including auditing) of not less than 3 years' duration and in commercial law (including company law) of not less than 2 years' duration; or

(iii) has other qualifications and experience that, in the opinion of the Authority, are equivalent to the qualifications mentioned in subparagraph (i) or (ii); and

(b) the Authority is satisfied that the applicant has had sufficient practical experience in auditing, is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor,

but otherwise the Authority shall refuse the application.

(4) The Authority shall not register as an auditor a person who is subject to a restriction.

(5) Where the Authority grants an application by a person for registration as an auditor, the Authority shall cause to be issued to the person a certificate by the Authority stating that the person has been so registered and specifying the date on which the application was granted.

(6) Where —

(a) in a certificate issued to a person under subsection (5) (including a certificate issued pursuant to this subsection) a date is specified for the purposes of subsection 53(2); and

(b) the person requests the Authority to alter the date so specified and surrenders the certificate to the Authority,

the Authority may cancel the certificate and issue to the person under subsection (5), in place of the cancelled certificate, a new certificate that specifies a different date for the purposes of subsection 53(2).

(7) Registration under this section shall be deemed to have taken effect at the commencement of the day specified in the certificate as the date on which the application for registration was granted and remains in force for a period of 3 years or until it is sooner cancelled.

(8) The Authority shall not refuse to register a person as an auditor unless the Authority has afforded the person an opportunity to appear before the Authority and to make submissions and give evidence to the Authority in relation to the matter.

(9) Where the Authority refuses an application by a person for registration as an auditor, the Authority shall, not later than 14 days after the decision, give to the person notice in writing setting out the decision and setting out the findings on material questions of fact, the evidence or other material on which those findings were based and the reasons for the decision.

Auditor-General deemed to be registered as auditor

44. A person who holds office as, or is for the time being exercising the powers and performing the duties of, the Auditor-General for the Commonwealth, shall be deemed to be registered as an auditor under this Division.

Government Auditor taken to be registered as auditor

44A. A person or firm holding office under section 51 of the *Norfolk Island Act 1979* as the Norfolk Island Government Auditor is taken to be registered as an auditor under this Division.

Registration of liquidators

45. **(1)** Subject to this section, where an application for registration as a liquidator is made under section 42 and before the expiration of 6 months after the date of commencement of this Act by a person who was, immediately before that date, registered as a liquidator under the repealed laws the Authority shall grant the application and register the applicant as a liquidator unless the Authority is satisfied that the person is not a fit and proper person to be registered as a liquidator.

(2) If the Authority is so satisfied, the Authority shall refuse the application.

(3) Subject to this section, where an application for registration as a liquidator (not being an application to which subsection (1) applies) is made under section 42, the Authority shall grant the application if —

(a) the applicant —

(i) is a member of The Institute of Chartered Accountants in Australia, of the Australian Society of Accountants or of some other prescribed body;

(ii) holds a degree, diploma or certificate from a prescribed university or other prescribed institution in Australia or New Zealand and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Authority to represent a course of study in accountancy of not less than 3 years' duration and in commercial law (including company law) of not less than 2 years' duration; or

(iii) has other qualifications and experience that, in the opinion of the Authority, are equivalent to the qualifications mentioned in subparagraph (i) or (ii);

(b) the Authority is satisfied that the applicant has sufficient experience in connection with the winding up of corporations is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator,

but otherwise the Authority shall refuse the application.

(4) Where an application for registration as a liquidator of a specified corporation is made under section 42, the Authority shall grant the application and register the applicant as a liquidator of that corporation if the Authority is satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the corporation, having regard to the nature of the property or business of the corporation and the interests of its creditors and contributories, but otherwise the Authority shall refuse the application.

(5) The Authority shall not register as a liquidator, or as a liquidator of a specified corporation, a person who is subject to a restriction.

(6) Where —

(a) the Authority grants an application by a person for registration as a liquidator or as a liquidator of a specified corporation; and

(b) the person has complied with the requirements of section 47,

the Authority shall cause to be issued to the person a certificate by the Authority —

(c) stating that the person has been so registered;

(d) specifying a date as the date of commencement of the registration, being —

(i) the date on which the Authority granted the application; or

(ii) the date on which the person complied with the requirements of section 47,

whichever was the later; and

(e) in the case of a person who is registered under subsection (4) as a liquidator of a specified corporation - setting out the name of that corporation.

(7) Where —

(a) in a certificate issued to a person under subsection (6) (including a certificate issued pursuant to this subsection) a date is specified for the purposes of subsection 53(2); and

(b) the person requests the Authority to alter the date so specified and surrenders the certificate to the Authority,

the Authority may cancel the certificate and issue to the person under subsection (6), in place of the cancelled certificate, a new certificate that specifies a different date for the purposes of subsection (6).

(8) The registration of a person as a liquidator under subsection (1) comes into force at the commencement of the day specified in the certificate as the date of commencement of the registration and remains in force for a period of 3 years unless it is sooner cancelled.

(9) The registration of a person as a liquidator of a specified corporation under subsection (4) comes into force at the commencement of the day specified in the certificate as the date of commencement of the registration and remains in force —

(a) until the expiration of a period of 3 years unless it is sooner cancelled; or

(b) until the dissolution of the corporation takes effect, whichever is the earlier.

(10) The Authority shall not refuse to register a person as a liquidator, or as a liquidator of a specified corporation, unless the Authority has afforded the person an opportunity to appear before the Authority and to make submissions and give evidence to the Authority in relation to the matter.

(12) Where the Authority refuses an application by a person for registration as a liquidator, or as a liquidator of a specified corporation, the Authority shall, not later than 14 days after the decision, give to the person notice in writing setting out the decision, and the findings on material questions of fact, the evidence or other material on which those findings were based and the reasons for the decision.

Registration of official liquidators

46. **(1)** The Authority may register as an official liquidator a person who is a registered liquidator.

(2) A person so registered is entitled, upon request, to be issued with a certificate of his registration.

(3) The Authority may register as many official liquidators as he thinks fit.

Security to be given by liquidators

47. **(1)** Where the Authority grants an application by a person for registration as a liquidator or as a liquidator of a specified corporation, the person shall lodge and maintain with the Registrar a security for the due performance of his duties as liquidator in such form and for such amount as are, from time to time, determined by the Authority in relation to that liquidator and with such surety or sureties (if any) as the Authority, from time to time, requires.

(2) Where a security is lodged with the Registrar in accordance with subsection (1), the security may be applied by the Registrar in such circumstances, for such purposes and in such manner as are prescribed.

(3) The regulations may make provision for or in relation to —

(a) the discharge in whole or in part by the Authority of securities lodged pursuant to this section; and

(b) the release by the Authority of sureties referred to in subsection (1) from all or any of their obligations as sureties.

Register of Auditors

48. **(1)** The Authority shall cause a Register of Auditors to be kept for the purposes of this Act and shall cause to be entered in the Register in relation to a person who is registered as an auditor —

(a) the name of the person;

(b) the date of commencement of the registration of that person as an auditor;

(c) the address of the principal place where the person practises as an auditor and the address of the other places (if any) at which he so practises;

(d) if the person practises as an auditor as a member of a firm or under a name or style other than his own - the name of that firm or the name or style under which he so practises;

(e) particulars of any suspension of the registration of the person as an auditor and of any action taken in respect of the person under this Act; and

(f) such other particulars as the Authority considers appropriate.

(3) Where a person ceases to be registered as an auditor, the Authority shall cause to be removed from the Register of Auditors the name of the person and the other particulars entered in the Register in relation to that person.

(4) A person may inspect and make copies of, or take extracts from, the Register of Auditors.

Registers of Liquidators and Official Liquidators

49. (1) The Authority shall cause a Register of Liquidators to be kept for the purposes of this Act and shall cause to be entered in the Register —

(a) in relation to a person who is registered as a liquidator —

(i) the name of the person;

(ii) the date of commencement of the registration of that person as a liquidator;

(iii) the address of the principal place where the person practises as a liquidator and the addresses of the other places (if any) at which he so practises;

iv) if the person practises as a liquidator as a member of a firm or under a name or style other than his own name - the name of that firm or the name or style under which he so practises; and

(v) particulars of any suspension of the registration of the person as liquidator and of any action taken in respect of the person under this Act; and

(b) in relation to a person who is registered as a liquidator of a specified corporation —

(i) the name of the person;

(ii) the name of the corporation;

(iii) the date of commencement of the registration of the person as a liquidator of the corporation;

(iv) the address of the principal place where the person proposes to perform his functions as the liquidator of the corporation;

(v) if the person practises a profession as a member of a firm or under a name or style other than his own name, being a profession by virtue of which he is qualified to be appointed as a liquidator of the corporation - the name and address of that firm or the name or style under which he so practises; and

(vi) particulars of any suspension of the registration of the person as a liquidator of that corporation and of any action taken in respect of the person under this Act.

(2) The Authority may cause to be entered in the Register in relation to a person who is registered as a liquidator, or as a liquidator of a specified corporation, such other particulars as the Authority considers appropriate.

(3) The Authority shall cause a Register of Official Liquidators to be kept for the purposes of this Act and shall cause to be entered in the Register the name, and such other particulars as the Authority considers appropriate, of each person registered as an official liquidator.

Removal from Register

50. Where a person ceases to be registered under this Part as a liquidator, as a liquidator of a specified corporation or as an official liquidator, the Authority shall cause to be removed from the relevant Register the name of the person and the other particulars entered in the Register in relation to that person.

Inspection of Register

51. A person may inspect and make copies of, or take extracts from, the Register of Liquidators or the Register of Official Liquidators.

Notification of certain matters

52. **(1)** Where —

(a) a person who is a registered company auditor ceases to practise as an auditor; or

(b) a change occurs in any matter particulars of which are entered in the Register of Auditors in relation to a person who is a registered company auditor,

the person shall, not later than 21 days after the occurrence of the event concerned, lodge with the Authority particulars in writing of that event.

(2) Where —

(a) a person who is a registered liquidator ceases to practise as a liquidator; or

(b) a change occurs in any matter particulars of which are entered in the Register of Liquidators in relation to a person who is a registered liquidator,

the person shall, not later than 21 days after the occurrence of the event concerned, lodge with the Authority particulars in writing of that event.

(3) Where —

(a) a person who is registered as a liquidator of a specified corporation ceases to act as a liquidator in the winding up of that corporation; or

(b) a change occurs in any matter particulars of which are entered in the Register of Liquidators in relation to a person who is registered as a liquidator of a specified corporation,

the person shall, not later than 21 days after the occurrence of the event concerned, lodge with the Authority particulars in writing of that event.

(4) A person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation shall, not later than 3 days after he becomes subject to a restriction, lodge with the Register particulars in writing of the circumstances by reason of which he became so subject.

Triennial statements by registered auditors and liquidators

53. **(1)** Where a person applies to the Authority for registration as an auditor or as a liquidator and his application is granted within one year after the commencement of this Act, the Authority may, in the certificate issued under subsection 43(5) or 45(6) (in this section referred to as "the relevant certificate"), specify a date for the purposes of subsection (2) of this section, being a date that is not more than 3 years after the date (in this section referred to as "the commencement date") that is, in the relevant certificate, specified pursuant to subsection 43(5) or 45(6), as the case may be.

(2) Where, in a certificate issued to a registered company auditor or a registered liquidator under subsection 43(5) or 45(6), as the case may be, a date is specified for the purposes of this subsection, the registered company auditor or registered liquidator shall lodge with the Authority, within one month after that date, a statement setting out the prescribed information in respect of the period commencing on the commencement date and ending on the first-mentioned date.

(3) A person who is a registered company auditor or a registered liquidator shall, within one month after the expiration of the period of 3 years commencing —

(a) in the case of a person to whom subsection (2) applies - on the date specified in the relevant certificate for the purposes of subsection (2); or

(b) in the case of a person to whom subsection (2) does not apply - on the commencement date,

and of each subsequent period of 3 years, lodge with the Authority a statement in respect of that period of 3 years setting out the prescribed information.

(4) The Authority may, on the application of a registered company auditor or a registered liquidator made before the expiration of the period for lodging a statement under subsection (2) or (3), in his discretion extend, or further extend, that period.

(5) The Authority may, by notice in writing served on the person, require a person who is registered as a liquidator of a specified corporation to lodge with the Authority, within a period specified in the notice, a statement in respect of a period specified in the notice setting out the prescribed information and, where such a notice is served on a person, the person shall lodge the statement as required by the notice.

Certain persons deemed to be registered

54. A person who is, or is to be deemed to be, registered as an auditor, liquidator or official liquidator under the provisions of a law of a State or of a Territory other than Norfolk Island relating to companies shall be deemed to be registered as an auditor, liquidator or official liquidator, as the case may be, under this Act.

Qualified privilege of auditors and other persons

55. (1) An auditor is not, in the absence of malice on his part, liable to an action for defamation at the suit of a person in respect of —

(a) a statement that he makes, orally or in writing, in the course of his duties as auditor;

(b) a statement that he makes, orally or in writing, on a report of the directors under section 341 or on a statement, report or other document that is to be deemed, for any purpose, to be part of the first-mentioned report; or

(c) the giving of a notice, or the sending of a copy of accounts, group accounts or a report, to the Registrar under subsection 357(10) or (11).

(2) A person is not, in the absence of malice on his part, liable to an action for defamation at the suit of a person —

(a) in respect of the publishing of a document prepared by an auditor in the course of his duties and required by or under this Act to be lodged with the Registrar, whether or not the document has been so lodged; or

(b) in respect of the publishing of a statement made by an auditor as mentioned in subsection (1).

(3) This section does not affect a right, privilege or immunity that an auditor or other person has apart from this section as defendant in an action for defamation.

Cancellation of registration by request

56. The Authority may, at the request of the person, cancel the registration of a person as an auditor, liquidator, liquidator of a particular corporation or official liquidator.

Suspension or cancellation of registration for cause

57. (1) Where a person registered as an auditor, liquidator, liquidator of a particular corporation or official liquidator has ceased to have the qualifications required for registration or has become subject to a disqualification for registration, the Authority may suspend or cancel the registration.

(2) The Authority shall not suspend or cancel the registration of a person under subsection (1) unless the Authority has afforded the person an opportunity to appear before the Authority and to make submissions and give evidence to the Authority in relation to the matter.

Appeals to the Supreme Court

58. (1) The Registrar may appeal to the Court against a decision of the Authority to register a person under this Division.

(2) A person whose application for registration under this Division has been refused by a decision of the Authority may appeal to the Court against the decision.

(3) A person whose registration under this Division has been suspended or cancelled by a decision of the Authority may appeal to the Court against the decision.

(4) The Court shall hear and determine an appeal under this section and shall affirm, reverse or modify the decision appealed against.

(5) The Registrar shall give notice, as prescribed, of an appeal by him under this section to the Authority and to the person concerned and a person who has appealed under this section shall give notice, as prescribed, to the Authority and to the Registrar.

(6) The Registrar shall cause notice of the decision on an appeal under this section to be published in the *Gazette* and the Authority shall take such steps (if any) as are necessary to give effect to the decision.

Division 4 — Registers and Registration of Documents

Registers

59. The Registrar shall, subject to this Act, keep such registers as he considers necessary and in such form as he considers to be appropriate.

Inspection of documents

60. **(1)** A person may —

(a) inspect a document lodged with the Registrar, not being —

(i) an application under section 42;

(ii) a document lodged under section 52 or 53; or

(iii)a document that has been destroyed or otherwise disposed of;

(b) require a certificate of the incorporation of a company or some other certificate authorised by this Act to be given by the Registrar; or

(c) require a copy of or extract from a document that he is entitled to inspect pursuant to paragraph (a) or a certificate referred to in paragraph (b) to be given, or given and certified, by the Registrar.

(2) If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to paragraph (1)(a) to inspect the original of that document or certificate.

(3) The reference in paragraph (1)(c) to a document or certificate includes, where a reproduction or transparency of that document or certificate has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.

Admissibility of copies

61. **(1)** A copy of or extract from a document lodged with the Registrar and certified by the Registrar is, in any proceedings, admissible in evidence as of equal validity with the original document.

(2) The reference in subsection (1) to a document includes, where a reproduction or transparency of the document has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency.

Certificates of Registrar

62. In any proceedings —

(a) a certificate by the Registrar that, as at a date or during a period specified in the certificate, no company was registered under this Act or under the repealed laws by a name specified in the certificate is evidence that as at that date or during that period, as the case may be, no company was so registered; and

(b) a certificate by the Registrar that a requirement of this Act specified in the certificate —

(i) had or had not been complied with as at the date or within a period specified in the certificate; or

(ii) had been complied with as at a date specified in the certificate but not before that date,

is evidence of the matters specified in the certificate.

Refusal of registration in certain cases

63. (1) If the Registrar is satisfied on reasonable grounds that a document submitted for lodgment with him —

(a) contains matter contrary to law;

(b) contains matter that, in a material particular, is false or is misleading, in the form or context in which it is included;

(c) by reason of an omission or misdescription, has not been duly completed;

(d) does not comply with the requirements of this Act; or

(e) contains an error, alteration or erasure,

the Registrar may refuse to receive or register the document.

(2) In such a case, the Registrar may request —

(a) that the document be appropriately amended or completed and re-submitted;

(b) that a fresh document be submitted in its place; or

(c) where the document has not been duly completed, that a supplementary document be lodged.

Information from lodging party

64. The Registrar may require a person who submits a document for lodgment with the Registrar to produce to the Registrar such other document, or to furnish to the Registrar such information, as the Registrar thinks necessary in order to decide whether he may refuse to receive or register the document.

Disposal of documents

65. The Registrar may, if it appears to him that it is no longer necessary or desirable to retain it, destroy or dispose of —

(a) a document that, by reason of lapse of time, need no longer be retained; or

(b) a document a transparency of which has been incorporated with a register kept by the Registrar.

Court may order lodgment or amendment of documents

66. **(1)** If a corporation or other person has made default in complying with —

(a) a provision of this Act or of some other law that requires the lodging with the Registrar of a return, account or other document or the giving of notice of a matter to the Registrar; or

(b) a request of the Registrar to amend or complete and resubmit a document or to submit a fresh document,

and fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court or the Court of Petty Sessions may, on an application by a member or creditor of the corporation or by the Registrar, make an order directing the corporation or an officer of the corporation or the person to make good the default within a time specified in the order.

(2) The order may provide that all costs of and incidental to the application shall be borne by the corporation or by an officer of the corporation responsible for the default or by the person.

(3) A corporation, an officer of a corporation or other person shall not contravene or fail to comply with an order under subsection (1) that is applicable to it or him.

Penalty: 50 penalty units or imprisonment or both.

(4) This section does not affect the operation of some other law imposing penalties on a corporation or its officers or on another person in respect of a default mentioned in subsection (1).

Relodging of lost registered documents

67. **(1)** If, in the case of a corporation incorporated or registered in Norfolk Island, whether under this Act or under the repealed laws, any of the constituent documents of, or any other document relating to, the corporation lodged with the Registrar has been lost or destroyed, a person may apply to the Registrar for leave to lodge with the Registrar a copy of the document as originally lodged.

(2) The Registrar may direct that notice of the application be given to such persons and in such manner as he considers to be appropriate.

(3) Whether or not an application has been made to the Registrar under subsection (1), the Registrar may, upon being satisfied —

(a) that an original document mentioned in that subsection has been lost or destroyed;

(b) as to the date of the lodging of that document; and

(c) that a copy of that document produced to the Registrar is a correct copy,

certify upon the copy that he is so satisfied and grant leave for the copy to be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment the copy has, and shall be deemed to have had from the date mentioned in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.

(5) The Court may, by order made upon application by a person aggrieved and after notice to any other person as directed by the Court, confirm, vary or rescind the certificate.

(6) An office copy of the order may be lodged with the Registrar and shall be registered by him but no payment, contract, dealing, act or thing made, had or done in good faith before the registration of the order and upon the faith of and in reliance upon the certificate is invalidated or affected by the variation or rescission.

(7) Where a transparency of a document referred to in subsection (1) has been incorporated with a register kept by the Registrar and is lost or destroyed as referred to in that subsection, the foregoing provisions of this section have effect as if the document of which it is a transparency had been so lost or destroyed.

PART 4 — CONSTITUTION OF COMPANIES

Division 1 — Incorporation

Formation of companies

68. (1) Subject to this Act, any 5 or more persons, or, where the company to be formed will be a proprietary company, any 2 or more persons, associated for a lawful purpose may, by subscribing their names to a memorandum and complying with the requirements of this Act as to registration, form an incorporated company.

(2) A company may be —

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company.

(3) Subject to subsection (4) —

(a) an association or partnership consisting of more than 20 persons that has for its object the acquisition of gain by the association or partnership or by individual members of the association or partnership shall not be formed unless it is incorporated under this Act; and

(b) a person who participates in the purported formation of an association or partnership in contravention of paragraph (a) is guilty of an offence.

(4) Where a profession or calling is declared by the Minister by notice published in the Gazette to be a profession or calling that may be carried on by an unincorporated association or partnership consisting of not more than the number of persons specified in the notice, an association or partnership formed for the purpose of carrying on that profession or calling and consisting of not more than that number of persons may carry on that profession or calling notwithstanding that it is not incorporated under this Act.

Proprietary companies

69. (1) A company having a share capital may be incorporated as a proprietary company if a provision of its memorandum or articles —

(a) restricts the right to transfer its shares;

(b) limits to not more than 50 the number of its members (joint holders of shares being counted as one person but without counting a person in the employment of the company or of its subsidiary or a person who, while previously in the employment of the company or of its subsidiary was, and thereafter has continued to be, a member of the company);

(c) prohibits an invitation to the public to subscribe for, and an offer to the public to accept subscriptions for, shares in, or debentures of, the company; and

(d) prohibits an invitation to the public to deposit money with, and an offer to the public to accept deposits of money with, the company for a fixed period or repayable at call, whether bearing or not bearing interest.

(2) Where, upon the commencement of this Act, neither the memorandum nor the articles of a company that was a proprietary company under the repealed laws contains or contain the restrictions, limitations and prohibitions required by subsection (1) to be included in the memorandum or articles of a company that may be incorporated as a proprietary company, the articles of the company shall be deemed to include each such restriction, limitation or prohibition as is not so included and a restriction on the right to transfer its shares that is to be so deemed to be included in its articles shall be deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

(3) Where a restriction, limitation or prohibition that is to be deemed to be included in the articles of a company under subsection (2) is inconsistent with a provision already included in the memorandum or articles of the company, that restriction, limitation or prohibition, to the extent of the inconsistency, prevails.

(4) A proprietary company may, by special resolution, alter a restriction on the right to transfer its shares that is included, or is to be deemed to be included, in its memorandum or articles or a limitation on the number of its members that is included, or is to be deemed to be included, in its memorandum or articles but not so that the memorandum and articles of the company cease to include the limitation required by paragraph (1)(b) to be included in the memorandum or articles of the company.

Registration and incorporation

70. (1) Persons who desire the incorporation of a company shall lodge the memorandum and the articles (if any) of the proposed company with the Registrar together with the other documents required to be lodged by or under this Act and the Registrar shall, subject to this Act, register the company by registering the memorandum and articles (if any).

(2) On the registration of the memorandum, the Registrar shall certify under his seal that the company is, from and including the date specified in the certificate, incorporated and that the company is —

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company,

as the case may be, and, where applicable, that it is a proprietary company.

(3) The Registrar shall keep a copy of a certificate under subsection (2) and sections 60 and 61 apply to that copy as if it were a document lodged with the Registrar.

(4) A company shall not be registered under subsection (1) unless the name under which the company is proposed to be registered is reserved under section 79 in respect of the company.

Effect of incorporation

71. (1) From and including the date of incorporation specified in the certificate of incorporation, but subject to this Act, the subscribers to the memorandum, together with such other persons as are for the time being members of the company, are an incorporated company by the name set out in the memorandum.

(2) The company —

(a) is capable forthwith of performing all the functions of a body corporate;

(b) is capable of suing and being sued;

(c) has perpetual succession and shall have a common seal; and

(d) has power to acquire, hold and dispose of property.

(3) The members of the company are liable as members of the company to contribute to the property of the company in a winding up of the company as provided by this Act.

(4) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and, on the incorporation of the company, each subscriber becomes such a member and his name shall be entered in the register of members of the company.

(5) Each other person who agrees to become a member of the company and whose name is entered in the register of members of the company becomes a member of the company.

Membership of holding company

72. (1) A corporation cannot be a member of a company that is its holding company and an allotment or transfer of shares in the capital of a company to its subsidiary is void.

(2) A purported acquisition of units of shares in a company that is a holding company by its subsidiary is void.

(3) Subsection (1) or (2) does not apply where —

(a) the subsidiary is concerned as a personal representative; or

(b) the subsidiary is concerned as a trustee and —

(i) the holding company or a subsidiary of the holding company is not beneficially interested under the trust; or

(ii) the holding company or a subsidiary of the holding company is beneficially interested under the trust only by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the holding company or a subsidiary of the holding company.

(4) This section does not prevent a subsidiary that was, at the commencement of this Act, a member of its holding company from continuing to be a member but, subject to subsection (3), the subsidiary does not have a right to vote at meetings of the holding company or of the members included in a class of members of the holding company.

(5) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary of the holding company, it already holds shares in the holding company, but, subject to subsection (3) —

(a) the subsidiary does not have a right to vote at meetings of the holding company or of the members included in a class of members of the holding company; and

(b) the subsidiary shall, within the period of 12 months, or within such longer period as the Court allows, after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(6) Subject to subsection (3), subsections (1), (2), (4) and (5) apply in relation to a nominee for a corporation that is a subsidiary as if references in those subsections to such a corporation included references to the nominee.

(7) In relation to a holding company that is either a company limited by guarantee or an unlimited company, the reference in this section to shares shall, whether or not the holding company has a share capital, be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Requirements as to memorandum

73. (1) The memorandum of a company shall be printed, divided into numbered paragraphs, dated and signed by the persons desiring the formation of the company.

(2) The memorandum shall state, in addition to other requirements, such of the following as are relevant to the company:

(a) the name of the company;

(b) unless the company is an unlimited company - the amount of share capital (if any) with which the company proposes to be registered and the division of that share capital into shares of a specified amount;

(c) if the company is a company limited by shares - that the liability of the members is limited;

(d) if the company is a company limited by guarantee or both by shares and by guarantee - that the liability of the members is limited and that each member undertakes to contribute to the property of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount in addition to any amount unpaid on any shares held by him;

(e) if the company is an unlimited company - that the liability of the members is unlimited;

(f) the full names, addresses and occupations of the subscribers to the memorandum being natural persons, and the corporate names, and the addresses of the registered or principal offices, of the subscribers to the memorandum being corporations;

(g) that those subscribers desire to be formed into a company pursuant to the memorandum;

(h) where the company is to have a share capital - that each subscriber agrees to take the number of shares in the capital of the company set out opposite his name.

(3) The memorandum may state the objects of the company.

Requirements as to subscribers

74. **(1)** Each subscriber to the memorandum —

(a) if the company is to have a share capital - shall state in words —

(i) the number of shares that he agrees to take; and

(ii) if the shares in the company are divided into classes, the class or the respective classes in which the shares that he agrees to take are included; and

(b) whether or not the company is to have a share capital - shall sign the memorandum in the presence of at least one witness, not being another subscriber.

(2) A witness to the signature of a subscriber shall attest the signature and add his address.

Signatures of bodies corporate

75. **(1)** A reference to the signing of the memorandum of a company shall, in the case of the signing by a person being a body corporate, includes a reference to the affixing in accordance with the constituent documents of the body corporate of the common or official seal of the body corporate to the memorandum.

(2) Where a body corporate signs the memorandum by so affixing its common or official seal, subsection 74 (1) does not require a witness to the affixing of the seal.

Limited liability

76. A statement in the memorandum of a company limited by shares that the liability of members is limited means that the liability of each member is limited to the amount (if any) unpaid on the shares held by him.

Division 2 — Names

Names of particular classes of companies

77. (1) A limited company shall have the word "Limited" or the abbreviation "Ltd." as part of and at the end of its name.

(2) A proprietary company shall have the word "Proprietary" or the abbreviation "Pty." as part of its name, inserted immediately before the word "Limited" or before the abbreviation "Ltd." or, in the case of an unlimited company, at the end of its name.

(3) A description of a company shall not be taken to be inadequate or incorrect by reason of the use of —

(a) the abbreviation "Co." or "Coy." in lieu of the word "Company" contained in the name of the company;

(b) the abbreviation "Pty." in lieu of the word "Proprietary" contained in the name of the company;

(c) the abbreviation "Ltd." in lieu of the word "Limited" contained in the name of the company;

(d) the symbol "&" in lieu of the word "and" contained in the name of the company; or

(e) any of those words in lieu of the corresponding abbreviation or symbol contained in the name of the company.

Availability of names

78. (1) For the purposes of this Division, a name shall be taken to be available for reservation in Norfolk Island unless the name —

(a) is a name that is already reserved or registered under this Division or under the corresponding provision of the repealed laws or, in the opinion of the Registrar, so closely resembles such a name as to be likely to be mistaken for it;

(ab) contains the words 'Duty free' or 'Tax free' or words of similar connotation;

(b) is, in the opinion of the Registrar, undesirable; or

(c) is a prescribed name.

(2) Where the name of a company is (whether through inadvertence or otherwise, whether originally or by change of name or as a result of an enactment) a name that is not available to the company —

(a) the company may, by special resolution, change its name to a name that is reserved in respect of the company under section 79; and

(b) if the Registrar so directs, the company shall so change its name within 90 days after the date of the direction or within such longer period as the Registrar allows.

(3) A change of name by a company under this section does not —

(a) create a new legal entity;

(b) prejudice or affect the identity if the body corporate constituted by the company or its continuity as a body corporate;

(c) affect the property, or the rights or obligations, of the company; or

(d) render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or begun by or against the company by its former name may be continued or begun by or against it by its new name.

Reservation and registration of name of intended company

79. **(1)** A person may apply to the Registrar for the reservation of a name as the name of an intended company.

(2) If —

(a) the Registrar is satisfied that the application is made in good faith; and

(b) the name is available for reservation,

the Registrar shall reserve the name for a period of 3 months from the date of lodgment of the application, and, where the Registrar so reserves the name, the name shall be deemed to have been reserved as from that date.

(3) Where —

(a) a name is reserved under this section in respect of an intended company; and

(b) the Registrar registers the company by that name,

the Registrar shall register the name of the company and, where the Registrar so registers the name, the name ceases to be reserved under this section.

(4) Where a name has been reserved under this section in respect of an intended company and the person who applied for the reservation of the name notifies the Registrar in writing that he no longer desires the name to be reserved, the Registrar shall cancel the reservation of the name.

(5) The reservation of a name under this section in respect of an intended company does not of itself authorise the registration of the intended company by that name.

(6) The registration of a name under this section remains in force until the Registrar cancels the registration.

Reservation and registration of proposed new name

80. **(1)** A company may apply to the Registrar for the reservation of a name as the name to which the company proposes to change its name.

(2) If —

(a) the Registrar is satisfied that the application is made in good faith; and

(b) the name is available for reservation,

the Registrar shall reserve the name for a period of 3 months from the date of lodgment of the application, and, where the Registrar so reserves the name, the name shall be deemed to have been reserved as from that date.

(3) Where —

(a) a name is reserved under this section in respect of a company; and

(b) the company changes its name to that reserved name (in this subsection referred to as "the new name") under section 85,

the Registrar shall register the new name of the company and, where the Registrar so registers the new name —

(c) the new name ceases to be reserved under this section; and

(d) the Registrar shall cancel the registration under this Division of the name by which the company was registered before it changed its name to the new name.

(4) Where a name has been reserved under subsection (2) in respect of a company and the company notifies the Registrar in writing that it no longer desires the name to be reserved, the Registrar shall cancel the reservation of the name.

(5) The reservation of a name under this section does not of itself entitle the company to change its name to that name.

(6) The registration of a name under this section remains in force until the Registrar cancels the registration.

Reservation and registration of name of intended foreign company or foreign company

81. (1) A person may apply to the Registrar for the reservation of a name as the name of an intended foreign company that is proposed to become registered as a foreign company under this Act.

(2) A foreign company that proposes to become registered under this Act may apply to the Registrar for the reservation of a name as the name by which the foreign company proposes to become so registered.

(3) If —

(a) the Registrar is satisfied that an application under subsection (1) or (2) is made in good faith; and

(b) the name is available for reservation in Norfolk Island,

the Registrar shall reserve the name for a period of 3 months from the date of lodgment of the application, and, where the Registrar so reserves the name, the name shall be deemed to have been reserved as from that date.

(4) Where —

(a) a name is reserved under this section in respect of an intended foreign company or a foreign company; and

(b) the intended foreign company is formed and is registered, or the foreign company is registered, by that name as a foreign company under this Act,

the Registrar shall register the name of the foreign company and, where the Registrar so registers the name, the name ceases to be reserved under this section.

(5) Where a name has been reserved under this section in respect of an intended foreign company or a foreign company and the person who applied for the reservation of the name or the foreign company notifies the Registrar in writing that he or it, as the case may be, no longer desires the name to be reserved, the Registrar shall cancel the reservation of the name.

(6) The reservation of a name under this section in respect of an intended foreign company or a foreign company does not of itself entitle the intended foreign company or the foreign company to be registered by that name.

(7) The registration of a name under this section remains in force until the Registrar cancels the registration.

(8) Notwithstanding paragraph 78(a), a name shall not be taken, for the purposes of this section, not to be available for reservation by reason only that the name is already reserved or registered under this Division in respect of the foreign company that has applied for the reservation of the name under this section.

Reservation and registration of proposed new name of registered foreign company

82. (1) A registered foreign company may apply to the Registrar for the reservation of a name as the name to which the registered foreign company has changed its name or to which the registered foreign company proposes to change its name.

(2) If —

(a) the Registrar is satisfied that the application is made in good faith; and

(b) the name is available for reservation,

the Registrar shall reserve the name for a period of 3 months from the date of lodgment of the application, and, where the Registrar so reserves the name, the name shall be deemed to have been reserved as from that date.

(3) Where —

(a) a name is reserved under this section in respect of a registered foreign company; and

(b) whether before or after the name is so reserved, the company changed or changes its name to the reserved name (in this subsection referred to as "the new name"),

the Registrar shall register the new name of the company and, where the Registrar so registers the new name —

(c) the new name ceases to be reserved under this section; and

(d) the Registrar shall cancel the registration under this Division of the name by which the company was registered before it changed its name to the new name.

(4) The registration of a name under this section remains in force until the Registrar cancels the registration.

Extension of registration

83. Where —

(a) at any time during a period for which a name is reserved under this Division (whether or not pursuant to the exercise on a previous occasion or previous occasions of a power under this section) an application is made to the Registrar for an extension of that period; and

(b) the Registrar is satisfied that the application is made in good faith,

the Registrar may extend that period for a further period of 3 months.

Cancellation of registration

84. **(1)** Where a name has been registered under this Division in respect of a company and the company is dissolved, the Registrar shall cancel the registration of the name.

(2) Where a name has been registered under this Division in respect of a registered foreign company and the company in dissolved, the Registrar shall cancel the registration of the name.

(3) Where a name has been registered under this Division in respect of a registered foreign company and the company ceases to be registered, the Registrar shall cancel the registration of the name.

Change of name

85. **(1)** A company may, by special resolution and with the approval of the Registrar, change its name.

(2) The Registrar shall not approve the change unless the proposed new name is reserved in respect of the company under section 80.

(3) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name that is not available for reservation the company may, by special resolution, change its name to a name that is reserved in respect of that company under section 80 and, if the Registrar so directs, shall so change it within 2 months after the date of the direction or within such longer period as the Registrar allows, unless the Minister, by instrument in writing, annuls the direction.

(4) If the company fails to comply with the direction it is guilty of an offence.

(5) A company incorporated under the repealed laws shall not be directed to change its name except with the approval of the Minister.

(6) A change of name of a company pursuant to this Act does not operate so as to —

(a) create a new legal entity;

(b) affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) affect the property, or the rights or obligations, of the company; or

(d) render defective a legal proceeding by or against the company.

(7) A legal proceeding that could have been continued or commenced by or against the company by its former name may be continued or commenced by or against it by its new name.

(8) Notwithstanding anything in paragraph 78(a), a name of a company shall not be taken, for the purposes of subsection (3), not to be available for reservation by reason only that the name is registered under this Division in respect of that company.

Omission of "Limited" from names of charitable and other companies

86. **(1)** Where the Registrar is satisfied that a proposed limited company —

(a) is being formed for the purpose of providing recreation or amusement or of promoting commerce, industry, art, science, religion, charity, patriotism, a pension or superannuation scheme or some other object useful to the community;

(b) will apply its moneys (including profits) in promoting its objects; and

(c) will prohibit the payment of a dividend to its members,

the Registrar may (after requiring, if he thinks fit, the proposal to be advertised in such manner as he directs either generally or in a particular case), by licence, authorise the proposed company to be registered as a company with limited liability without the addition of the word "Limited" to its name and the company may be registered accordingly.

(2) Where the Registrar is satisfied —

(a) that the objects of a limited company are restricted to those specified in subsection (1) and to objects incidental or conductive to those so specified; and

(b) that by its memorandum or articles the company is required to apply its moneys (including profits) in promoting its objects and is prohibited from paying a dividend to its members,

the Registrar may, by licence, authorise the company to change its name to a name that does not contain the word "Limited", being a name approved by the Registrar.

(3) A licence under this section may be issued subject to such conditions as the Registrar considers to be appropriate.

(4) Conditions subject to which a licence is so issued are binding on the company and shall, if the Registrar so directs, be inserted in the memorandum or articles of the company and the memorandum or articles may, by special resolution, be altered to give effect to the direction.

(5) A company in respect of which a licence under this section is in force is exempt from complying with the provisions of this Act relating to the use of the word "Limited" as part of its name.

(6) The Registrar may, in a licence issued to a company under this section or by notice in writing served on a company in respect of which a licence under this section is in force, exempt the company from complying with the provisions of this Act specified in the licence or notice relating to the lodging of annual returns or other returns.

(7) The Registrar may, by notice in writing served on a company, revoke an exemption of the company from the provisions of this Act relating to the lodging of annual returns or other returns.

Revocation of licence

87. **(1)** Subject to subsection (2), the Registrar may, at any time, revoke a licence issued under section 86 and, where a licence is so revoked —

(a) the name of the company shall be deemed to be altered by the addition of the word "Limited" at the end of the name; and

(b) the company ceases to have the exemptions and privileges granted, by reason of the licence, by or under this Act.

(2) Before the licence is revoked, the Registrar shall give to the company notice in writing of intention to revoke the licence and shall give to the company an opportunity to make submissions and give evidence to the Registrar in relation to the matter.

(3) Before the licence is revoked, a provision of the memorandum of the company that was inserted in compliance with a condition subject to which the licence was issued may be altered in the same manner as a provision of the memorandum with respect to the objects of the company may be altered and section 101 applies to a proposal for the alteration accordingly.

Alteration of memorandum or articles

88. **(1)** Where a licence issued under section 86 is in force in respect of a company, an alteration of the memorandum or articles of the company, not being an alteration consisting only of a change of the name of the company, does not have effect unless —

(a) a statement setting out the text of the alteration or proposed alteration has been lodged with the Registrar and the alteration or proposed alteration has been approved by the Registrar; and

(b) the alteration is made in accordance with the articles of the company and the provisions of this Act.

(2) Where an alteration or proposed alteration of the memorandum or articles of a company, not being an alteration consisting only of a change of the name of the company, is approved as mentioned in paragraph (1)(a) and the alteration is made as mentioned in paragraph (1)(b), the alteration has effect notwithstanding a failure to obtain any consent or approval required to be obtained by virtue of a provision contained in the licence referred to in subsection (1) or a provision inserted in the memorandum or articles of the company for the purposes of subsection 86(4) or the corresponding provision of the repealed laws.

Division 3 — Powers and Status

Powers

89. **(1)** Subject to this Act, a company has the rights, the powers and the privileges of a natural person.

(2) Without limiting the generality of subsection (1), a company, has power —

(a) to issue and allot fully or partly paid shares in the company;

(b) to issue debentures of the company;

(c) to distribute the property of the company among the members, in kind or otherwise;

(d) to give security by charging uncalled capital;

(e) to grant a floating charge on property of the company;

(f) to procure the company to be registered or recognised as a body corporate in a place outside Norfolk Island; and

(g) to do any other act that it is authorised by law to do.

(3) The memorandum or articles of a company may restrict or prohibit the exercise by the company of any of the powers referred to in subsection (2).

(4) A company has the capacity to exercise its powers in a place outside Norfolk Island.

(5) This section does not affect the operation of a restriction on, or prohibition of, the exercise by a company of its powers, being a restriction or prohibition included in the memorandum or articles of the company before the commencement of this Act.

Restrictions on companies

90. (1) Subject to this Act, a company shall not —

(a) exercise a power that the company is prohibited by the memorandum or articles of the company from exercising;

(b) exercise a power contrary to a restriction on the exercise of that power contained in the memorandum or articles of the company; or

(c) where the memorandum of the company contains a provision stating the objects of the company - do an act otherwise than in pursuance of those objects.

(2) An officer of a company shall not be in any way, by act or omission and whether directly or indirectly, knowingly concerned in or party to a contravention by the company of subsection (1).

(3) Notwithstanding section 660 —

(a) a company that contravenes subsection (1); or

(b) an officer of a company who contravenes subsection (2),

is not guilty of an offence against this section.

Acts not invalid because prohibited

91. (1) An act of a company, including the making of an agreement by a company or a transfer of property to or by a company, is not invalid by reason only that the doing of the act is prohibited by section 90(1) or by the memorandum or articles of the company.

(2) An act of an officer of a company is not invalid by reason only that the doing of the act is prohibited by subsection 90(2).

Reliance on invalid acts

92. The fact that —

(a) the doing of an act by a company was or would be prohibited by subsection 90(1) or by the memorandum or articles of the company; or

(b) the doing of an act by an officer of a company was or would be prohibited by subsection 90(2),

may be asserted or relied on only in —

(c) a prosecution of a person for an offence against this Act;

(d) an application for an order under section 283;

(e) an application for an order under section 405;

(f) an application for an injunction under section 666;

(g) proceedings by the company, or by a member of the company, against a present or former officer of the company; or

(h) an application by the Registrar or by a member of the company for the winding up of the company.

Persons having dealings with companies, etc

93. (1) A person who has dealings with a company is, subject to subsection (4), entitled to make, in relation to those dealings, the assumptions referred to in subsection (3) and, in a proceeding in relation to such a dealing, an assertion by the company that the matters that the person is so entitled to assume were not correct shall be disregarded.

(2) A person who has dealings with a person who has acquired or purports to have acquired title to property from a company (whether directly or indirectly) is, subject to subsection (5), entitled to make, in relation to the acquisition or purported acquisition of title from the company, the assumptions referred to in subsection (3) and, in a proceeding in relation to such a dealing, an assertion by the company or by the second-mentioned person that the matters that the first-mentioned person is so entitled to assume were not correct shall be disregarded.

(3) The assumptions that a person is, by virtue of subsection (1) or (2), entitled to make in relation to dealings with a company, or in relation to an acquisition or purported acquisition from a company of title to property, as the case may be, are —

(a) that, at all relevant times, the memorandum and articles of the company have been complied with;

(b) that a person who appears, from returns lodged with the Registrar under this Act or with the Registrar of Companies under the repealed laws, to be a director, the principal executive officer or a secretary of the company was duly appointed and had authority to exercise the powers and perform the duties customarily exercised or performed by a director, by the principal executive officer or by a secretary, as the case may be, of a company carrying on a business of the kind carried on by the company;

(c) that a person who is held out by the company to be an officer or agent of the company was duly appointed and had authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned;

(d) that an officer or agent of the company who had authority to issue a document on behalf of the company had authority to warrant that the document was genuine and that an officer or agent of the company who had authority to issue a certified copy of a document on behalf of the company had authority to warrant that the copy was a true copy;

(e) that a document of the company, if —

(i) it bears what appears to be an impression of the seal of the company; and

(ii) the sealing of the document appears to be attested by 2 persons, being persons one of whom, by virtue of paragraph (b) or (c), may be assumed to be a director of the company and the other of whom, by virtue of paragraph (b) or (c), may be assumed to be a director or to be a secretary of the company;

was duly sealed by the company; and

(f) that the directors, the principal executive officer, the secretaries, the employees and the agents of the company have properly performed their duties.

(4) Notwithstanding subsection (1), if —

(a) a person has actual knowledge that a matter that, but for this subsection, he would be entitled to assume is not correct; or

(b) a person's connection or relationship with a company is such that he ought to know that a matter that, but for this subsection, he would be entitled to assume is not correct,

he is not entitled to make an assumption referred to in subsection (3) in respect of the matter in relation to dealings with the company.

(5) Where, by virtue of subsection (4), a person is not entitled to make a particular assumption in relation to dealings with a company, subsection (1) does not have effect in relation to an assertion by the company in relation to the assumption.

(6) Notwithstanding subsection (2), if, in relation to an acquisition or purported acquisition from a company of title to property —

(a) a person has actual knowledge that a matter that, but for this subsection, he would be entitled to assume is not correct; or

(b) a person’s connection or relationship with a company is such that he ought to know that a matter that, but for this subsection, he would be entitled to assume is not correct,

he is not entitled to make an assumption referred to in subsection (3) in respect of the matter.

(7) Where, by virtue of subsection (6), a person is not entitled to make a particular assumption in relation to a company, subsection (2) does not have effect in relation to an assertion by the company or by some other person in relation to the assumption.

Certain assumptions not to be made

94. A person is not entitled to make an assumption, in relation to a particular matter —

(a) that any one or more of the directors of a company were appointed to act in that matter as a committee of the board of directors of the company, by reason only that the memorandum or articles of the company provides or provide that authority to act in matters of that kind may be delegated to a committee of the board of directors; or

(b) that an officer or agent of a company had the authority of the company to act in that matter, by reason only that the memorandum or articles of the company provides or provide that authority to act in matters of that kind may be delegated to such an officer or agent.

Lodgment of documents not to constitute constructive notice

95. **(1)** A person shall not be taken to have knowledge of —

(a) the memorandum or articles of a company or of any of the contents of the memorandum or articles of a company;

(b) a document or the contents of a document; or

(c) any particulars,

by reason only that the memorandum, articles, document or particulars —

(d) has or have been lodged with the Registrar under this Act or with the Registrar of Companies under the repealed laws; or

(e) is or are referred to in some other document that has been so lodged.

(2) Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged with the Registrar under Part 11 or with the Registrar of Companies under the corresponding provisions of the repealed laws, to the extent that the document relates to a charge that is registrable under that Part or was registered under the repealed laws.

Effect of fraud

96. **(1)** Section 93 operates —

(a) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to dealings with a company; or

(b) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to an acquisition or purported acquisition (whether direct or indirect) of title to property from a company,

notwithstanding that a person referred to in paragraph 93(3)(b), (c), (d), (e) or (f) —

(c) has acted or is acting fraudulently in relation to the dealings, or in relation to the acquisition or purported acquisition of title to property from the company, as the case may be; or

(d) has forged a document that appears to have been sealed on behalf of the company.

(2) Subsection (1) does not have effect where the person referred to in paragraph (a) or (b) of that subsection has actual knowledge that a person concerned has acted or is acting fraudulently, or has forged a document, as mentioned in paragraph (c) or (d) of that subsection.

Change of status

97. **(1)** Subject to this section —

(a) an unlimited company may convert to a limited company if it was not, within the previous 3 years, a limited company that became an unlimited company pursuant to paragraph (d) or to a corresponding provision of the repealed laws;

(b) a company limited by shares may convert to a company limited both by shares and by guarantee;

(c) a company limited by guarantee may convert to a company limited both by shares and by guarantee; and

(d) a limited company may convert to an unlimited company.

(2) Where a company has applied in writing to the Registrar for a change of status as provided by subsection (1) and, subject to the provisions as applied by subsection (7), has lodged with the application the prescribed documents relating to the application, the Registrar shall issue to the company a certificate of incorporation —

(a) appropriate to the change of status applied for; and

(b) specifying, in addition to the particulars prescribed in respect of a certificate of incorporation of a company of that status, that the certificate is issued pursuant to this section

and, upon the issue of the certificate, the company is a company having the status specified in the certificate.

(3) Where the status of a company is changed pursuant to this section, notice of the change shall be published by the company in such manner (if any) as the Registrar directs.

(4) In subsection (2), "the prescribed documents", in relation to an application referred to in that subsection, means —

(a) a printed copy of a special resolution of the company —

(i) resolving to change the status of the company and specifying the status sought;

(ii) making such alterations of the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Act relating to the memorandum of a company of the status sought;

(iii) in the case of a company that has registered articles - making such alterations of and additions to the articles as are necessary to bring the articles into conformity with the requirements of this Act relating to the articles of a company of the status sought;

(iv) in the case of a company that does not have registered articles - adopting any articles that are required by this Act to be registered in respect of a company of the status sought or are proposed by the company as the registered articles of the company upon the change of its status; and

(v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;

(b) where, by a special resolution referred to in paragraph (a), the memorandum of the company is altered, the articles of the company are altered or added to or articles are adopted by the company - a printed copy of the memorandum as altered, the articles as altered or added to or the articles adopted, as the case may be; and

(c) in the case of an application by a limited company to convert to an unlimited company —

(i) an instrument of assent to the application subscribed by or on behalf of all the members of the company; and

(ii) a certificate in writing by a director or secretary of the company that the persons by whom or on whose behalf the instrument of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the instrument himself, that the director or secretary making the certificate has taken all reasonable steps to satisfy himself that each person who subscribed the instrument was lawfully empowered so to do.

(5) Subsections 100 (2) (10) (inclusive) do not apply to or in relation to an application under this section or to a prescribed document in relation to the application.

(6) A special resolution passed for the purposes of an application under this section takes effect only upon the issue under this section of a certificate of incorporation of the company.

(7) With such modifications as are necessary, the provisions of subsection 101(7) and sections 102 and 103 apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under section 101.

(8) A change the status of a company pursuant to this section does not operate —

(a) to create a new legal entity;

(b) to affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) to affect the property, rights or obligations, of the company; or

(d) to render defective any legal proceeding by or against the company,

(9) Legal proceeding that could have been continued or commenced by or against the company before the change its status may, notwithstanding the change, be continued or commenced by or against it after the change.

Change from public to proprietary company or from proprietary to public company

98. **(1)** A public company that has a share capital may convert to a proprietary company by lodging with the Registrar a copy of a special resolution —

(a) resolving to convert to a proprietary company and specifying an appropriate alteration of its name; and

(b) altering the provisions of its memorandum or articles so far as is necessary to impose the restrictions, limitations and prohibitions referred to in subsection 69(1).

(2) A proprietary company may, subject to its memorandum or articles, convert to a public company by lodging with the Registrar a copy of a special resolution resolving to convert to a public company and specifying an appropriate alteration of its name, and thereupon the restrictions, limitations and prohibitions referred to in subsection 69(1) as included in, or as to be deemed to be included in, the memorandum or articles cease to form part of the memorandum or articles.

(3) On compliance by a company with the provisions of subsection (1) or (2) and on the issue of a certificate of incorporation of the company altered accordingly, the company is a proprietary company or a public company, as the case requires.

(4) With such modifications as are necessary, subsection 101(7) and sections 102 and 103 in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to the conversion of a company pursuant to subsection (1) or (2) as if it were a special resolution under section 101.

(5) The conversion of a company pursuant to subsection (1) or (2) does not operate —

(a) to create a new legal entity;

(b) to affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) to affect the property, rights or obligations, of the company; or

(d) to render defective a legal proceeding by or against the company,

(6) A legal proceeding that could have been continued or commenced by or against the company before the conversion may, notwithstanding the conversion, be continued or commenced by or against it after the conversion.

Default in complying with requirements as to proprietary companies

99. **(1)** Where, on the application of the Registrar with respect to a proprietary company or of a member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph 69(1)(c) or (d) that is included, or is to be deemed to be included, in the memorandum or articles of the company, the Court may, by order, determine that, on such date as the Court specifies, the company ceased to be a proprietary company.

(2) Where —

(a) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in paragraph 69(1)(b) that is included, or is to be deemed to be included, in the memorandum or articles of the company;

(b) a proprietary company has been convicted of an offence under subsection (7);

(c) the memorandum or articles of a proprietary company have been so altered that they no longer include restrictions, limitations or prohibitions of the kinds specified in subsection 69(1); or

(d) a proprietary company has ceased to have a share capital,

the Registrar may, by notice in writing served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

(3) Where, under this section, the Court or the Registrar determines that a company has ceased to be a proprietary company —

(a) the company is a public company and shall be deemed to have been a public company from and including the date specified in the order or notice;

(b) the company shall, on the date so specified, be deemed to have changed its name by the omission from the name of the word "Proprietary" or the abbreviation "Pty.", as the case requires; and

(c) where an order has been made under subsection (1), the company shall, within 14 days after the date of the order, lodge with the Registrar an office copy of the order.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (1) or (2) has occurred but that it was accidental, inadvertent or arose from some other sufficient cause or that on other grounds it is just to grant relief, the Court may, on such terms and conditions as are just, determine that the company has not ceased to be a proprietary company.

(5) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a proprietary company without the leave of the Court.

(6) If a company fails to comply with paragraph (3)(c), the company and any officer of the company who is in default are each guilty of an offence.

(7) Where a subscription for shares in or debentures of, or deposit of money with, a proprietary company was arranged by or through a solicitor, broker, agent or other person (whether an officer of the company or not) who invites the public to make use of his services in arranging investments or holds himself out to the public as being in a position to arrange investments, the company and any person, including any officer of the company, who is a party to the arrangement are each guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(8) Where default is made in relation to a proprietary company in complying with a restriction, limitation or prohibition of a kind specified in sub-section 69(1) that is included, or is to be deemed to be included, in the memorandum or articles of the company, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(9) An act or transaction is not invalid by reason of the commission of an offence against subsection (7) or (8).

General provisions as to alteration of memorandum

100. (1) The memorandum of a company may be altered to the extent and in the manner provided by this Act but not otherwise.

(2) Subject to any provision of this Act requiring the lodging with the Registrar of a resolution of a company, an order of the Court or other document that affects the memorandum of a company, the company shall, within 14 days after the passing of such a resolution, the making of such an order or the execution of such a document, lodge with the Registrar a copy of the resolution, an office copy of the order or a copy of the document, as the case may be.

(3) Where an alteration of the memorandum of a company has been made (whether before or after the commencement of this Act), the company shall, on being required by the Registrar to do so, lodge with the Registrar a printed copy of the memorandum as so altered.

(4) If a company contravenes or fails to comply with subsection (2) or (3), the company and any officer of the company who is in default are each guilty of an offence.

(5) The Registrar shall register each resolution, order or other document lodged with him under this Act that affects the memorandum of a company, and, except in the case of a resolution under section 168 or an order or resolution under section 170, the alteration of the memorandum to which the resolution, order or document relates takes effect on, and not before, the registration of the resolution, order or document.

(6) Where a resolution, order or other document has been registered under subsection (5) —

(a) in the case of an order - the Registrar shall certify the registration of the order; and

(b) in the case of a resolution or other document - the Registrar shall, if the company so requests, certify the registration of the resolution or document.

(7) A certificate of the Registrar as to the registration of an order is conclusive evidence that all the requirements of this Act with respect to the alteration to which the order relates have been complied with.

(8) Notice of the registration shall be published in such manner (if any) as the Court or the Registrar directs.

(9) The Registrar shall, where appropriate, issue a certificate of incorporation in accordance with the memorandum as altered.

(10) The Registrar shall keep a copy of a certificate issued under subsection (9) and sections 60 and 61 apply to that copy as if it were a document lodged with the Registrar.

Alterations of memorandum

101. (1) Subject to this section, a company may, by special resolution, alter the memorandum of the company —

(a) where the memorandum contains a provision stating the objects of the company - by altering or omitting that provision;

(b) where the memorandum does not contain a provision stating the objects of the company - by inserting in the memorandum a provision stating the objects of the company; or

(c) in any case - by altering, omitting or inserting some other provision with respect to the objects of the company or a provision with respect to the powers of the company.

(2) Subject to this section, subsection 109(3) and section 405, if a provision of the memorandum of a company could lawfully have been contained in the articles of the company, the company may, by special resolution, alter the memorandum —

(a) unless the memorandum prohibits the alteration of that provision - by altering that provision; or

(b) unless the memorandum prohibits the omission of that provision - by omitting that provision.

(3) The memorandum of a company may provide that a special resolution altering or adding to a provision contained in the memorandum, being a provision that could lawfully have been contained in the articles of the company, does not have effect unless and until a further requirement specified in the memorandum has been complied with.

(4) Without limiting the generality of subsection (3), the further requirement referred to in that subsection may be a requirement that —

(a) the resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) the consent or approval of a particular person be obtained; or

(c) a particular condition be fulfilled.

(5) A memorandum of a company that, immediately before the commencement of this Act prohibited the alteration of a provision of the memorandum, being a provision that could lawfully have been contained in the articles of the company, shall be deemed also to prohibit the omission of that provision and a memorandum of a company that makes provision as mentioned in subsection (3) in respect of a special resolution altering or adding to a relevant provision of the memorandum shall be deemed also to contain a provision to the same effect in respect of a special resolution omitting that provision.

(6) Subsection (2) does not permit the alteration or omission of a provision of a memorandum of a company that relates to rights to which members included in a particular class of members are entitled.

(7) Notice of a general meeting specifying the intention to propose, as a special resolution, a resolution for the alteration of the memorandum of a company as mentioned in subsection (1) shall be given —

(a) to all members;

(b) to all trustees for debenture holders; or

(c) if there are no trustees for, or for a particular class of, debenture holders - to all debenture holders, or all debenture holders of that class, as the case may be, whose names are, at the time of the posting of the notice, known to the company.

(8) The Court may, in the case of a person or the persons included in a class of persons, dispense with the notice referred to in subsection (7).

Cancellation of alteration

102. (1) If an application for the cancellation of an alteration of the memorandum of a company is made to the Court in accordance with section 101 —

(a) in the case of an alteration as mentioned in subsection 101(1) - by the holders of not less than 10% in nominal value of the debentures of the company; or

(b) in the case of any alteration - by the holders of not less, in the aggregate, than 10% in nominal value of the company's issued share capital or of a class of that capital or, if the company is not limited by shares, not less than 10% of the company's members,

the alteration does not have any effect except in so far as it is confirmed by the Court.

(2) The application shall be made within 21 days after the date on which the resolution was passed and may be made, on behalf of the persons entitled to make the application, by such one or more of them as they appoint in writing for the purpose.

(3) On the application, the Court shall have regard to the rights and interests of the members of the company or of a class of them as well as to the rights and interests of the creditors and may do all or any of the following:

(a) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by subsidiary of the company) of the interests of dissentient members;

(b) give such directions and make such orders as are expedient for facilitating or carrying into effect such an arrangement;

(c) make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as are just.

Lodgment of copies

103. (1) Notwithstanding any other provision of this Act, a copy of a resolution altering a provision of the memorandum of a company as provided by subsection 100(1) or (2) shall not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution or, if an application to the Court has been made, before the application has been determined by the Court, whichever is the later.

(2) If an application has not been made to the Court in accordance with section 102, a copy of the resolution shall be lodged with the Registrar within 14 days

after the expiration of the 21 days referred to in subsection (1).

(3) If an application has been made to the Court in accordance with section 101, the company shall lodge a copy of the resolution, together with an office copy of the order of the Court, with the Registrar within 14 days after the application has been determined by the Court.

Interpretation

104. In sections 101, 102 and 103 —

(a) a reference to a memorandum includes a reference to a memorandum registered under the repealed laws; and

(b) a reference to a provision of the memorandum of a company that could lawfully have been contained in the articles of the company is, in the case of a memorandum of a company registered under the repealed laws, a reference to a provision of the memorandum of the company that could lawfully have been contained in the articles of the company if the memorandum and articles of the company had been registered under this Act.

Articles of association

105. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or limited both by shares and by guarantee or in the case of an unlimited company, be registered with the memorandum articles signed by the subscribers to the memorandum prescribing regulations for the company.

(2) Articles shall be —

(a) printed;

(b) divided into numbered paragraphs; and

(c) signed by each subscriber to the memorandum in the presence of at least one witness not being another subscriber.

(3) The witness shall attest the signature and add his address.

(4) A reference in subsection (1) to the signing of the articles of a company shall, in the case of the signing by a person being a body corporate, be construed as including a reference to the affixing in accordance with the constituent documents of the body corporate of the common or official seal of the body corporate to the articles and, where a body corporate signs the articles by so affixing its common or official seal, subsection (2) does not require a witness to the affixing of the seal.

(5) In the case of an unlimited company that has a share capital, the articles shall state the amount of share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount.

Adoption of Table A

106. (1) In this section, "Table A" means Table A in Schedule 3 to the *Companies Act 1981* of the Commonwealth as amended and in force for the time being.

(2) The articles of a company may adopt all or any of the regulations as contained in Table A with such alterations, additions and omissions as are appropriate to the circumstances of Norfolk Island and of the company.

(3) In the case of a company limited by shares and incorporated after the commencement of this Act, if articles are not registered, or if articles are registered adopting regulations as mentioned in subsection (2), those regulations shall, so far as applicable, be the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

Alteration of articles

107. (1) Subject to this Act, a company may by special resolution make an alteration of its articles.

(2) The memorandum of a company may provide that such a special resolution does not have effect unless and until a further requirement specified in the memorandum has been complied with.

(3) Without limiting the generality of subsection (2), the further requirement referred to in that subsection may be a requirement, that —

(a) the resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) the consent or approval of a particular person be obtained; or

(c) a particular condition be fulfilled.

(4) Subject to this Act, an alteration of the articles of a company is, from and including the date of the special resolution or such later date as is specified in the resolution, as valid as if originally contained in the articles and is subject to further alteration by special resolution in like manner.

(5) Subject to this section, a company has power to make an alteration of its articles by the adoption of all or any of the regulations contained in Table A by reference only to the regulations in the Table or to the numbers of particular regulations contained in the Table, without being required to set out in the special resolution the text of the Regulations so adopted.

(6) For the purposes of this section an addition to or omission from the articles is an alteration of the articles.

Memorandum and articles of companies limited by guarantee

108. (1) Where a company is limited by guarantee and does not have a share capital, a provision in the memorandum or articles or in a resolution of the company purporting to give a person a right to participate in the divisible profits of the company otherwise than as a member is void.

(2) For the purposes of the provisions of this Act relating to the memorandum of a company limited by guarantee (including this section), a provision in the memorandum or articles or in a resolution of the company purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified by the memorandum or articles or in the resolution, as the case may be.

Operation of memorandum and articles

109. (1) Subject to this Act, the memorandum and articles of a company have the effect of a contract under seal dash

(a) between the company and each member;

(b) between the company and each officer;

(c) between a member and each other member;

(d) between an officer and each other officer; and

(e) between each member and each officer,

under which each of those persons agrees to observe and perform the provisions of the memorandum and articles as in force for the time being so far as those provisions are applicable to or in relation to that person.

(2) Money payable by a member of a company to the company under the memorandum or articles is a debt from him to the company and is of the nature of a specialty debt.

(3) A member of a company, unless either before or after the alteration is made he agrees in writing to be bound by it, is not bound by an alteration of the memorandum or articles made after the date on which he became a member so far as the alteration —

(a) requires him to take or subscribe for more shares than the number held by him at the date of the alteration;

(b) increases in any way his liability as at the date of the alteration to contribute to the share capital of, or otherwise to pay money to, the company; or

(c) increases, or imposes, restrictions on the right to transfer the shares held by him at the date of the alteration.

(4) In this section, "officer", in relation to a company, means a director, the principal executive officer or a secretary of the company.

Copies of memorandum and articles

110. (1) A company shall, on being so required by a member, send to him a copy of the memorandum and of the articles (if any) of the company —

(a) if the company requires the payment of an amount not exceeding the prescribed amount - within 21 days after the payment is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request was made or within such longer period as the Registrar allows.

(2) Where an alteration has been made to the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued or supplied by the company after the date of alteration unless —

(a) the copy is in accordance with the memorandum or articles as altered; or

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

(3) Where an alteration of the articles of a company has been made (whether before or after the commencement of this Act), the company shall, on being required by the Registrar to do so, lodge with the Registrar a printed copy of the articles as altered.

(4) Where an agreement a copy of which is required to be lodged with the Registrar under section 316 affects the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued or supplied, and a copy of the articles shall not be lodged with the Registrar, by the company after the agreement is entered into unless a copy of the agreement is annexed to the copy of the memorandum or articles.

(5) If a company contravenes or fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Confirmation of contracts and authentication and execution of documents

111. (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of a company may make, vary or discharge a contract in the name of or on behalf of the company in the same manner as that in which that contract might be made, varied or discharged by a natural person.

(2) he making, variation or discharging of a contract in accordance with subsection (1) is effectual in law and binds the company and the other parties to the contract.

(3) A contract or other document executed, or purporting to have been executed, whether before or after the commencement of this Act, under the common seal of a company is not invalid by reason only that a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.

(4) This section does not prevent a company from making, varying or discharging a contract under its common seal.

(5) This section does not apply to the making, variation or discharging of a contract before the commencement of this Act but applies whether the company gives its authority before or after the commencement of this Act.

(6) This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.

Signatures of officers

112. A document or proceeding that requires authentication by a company may be authenticated by the signature of an officer of the company and need not be authenticated under the common seal of the company.

Appointment of agent or attorney

113. (1) A company may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf.

(2) A deed signed by such an agent or attorney on behalf of the company and under his seal or, subject to section 114, under the appropriate official seal of the company, binds the company and has the same effect as if it were under the common seal of the company.

(3) The authority of an agent or attorney empowered pursuant to subsection (1), as between the company and a person dealing with him, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his authority has been given to the person dealing with him.

Business outside Norfolk Island

114. (1) A company may, if so authorised by its articles, have for use outside Norfolk Island in place of its common seal one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of each place where it is to be used.

(2) The person who affixes such an official seal shall, by writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it was affixed.

(3) A document sealed with such an official seal shall be deemed to be sealed with the common seal of the company.

Ratification of contracts made before formation of company

115. (1) In this section —

(a) a reference to a non-existent company purporting to enter into a contract is a reference to —

(i) a person executing a contract in the name of a company where no such company exists; or

(ii) a person purporting to enter into a contract as agent or trustee for a proposed company;

(b) a reference to a person who purports to execute a contract on behalf of a non-existent company is a reference to a person who executes a contract or purports to enter into a contract as mentioned in paragraph (a); and

(c) a reference, in relation to the purported entry into a contract by a non-existent company, to the formation of the company is a reference —

(i) where a person has executed a contract in the name of a company and no such company exists - to the formation of a company that, in the circumstances, is reasonably identifiable with the company in the name of which the person executed the contract; or

(ii) where a person has purported to enter into a contract as agent or trustee for a proposed company - to the formation of a company that, in the circumstances, is reasonably identifiable with the proposed company.

(2) Where —

(a) a non-existent company purports to enter into a contract; and

(b) the company is formed within a reasonable time after the contract is purported to be entered into,

the company may, within a reasonable time after it is formed, ratify the contract.

(3) Where a company ratifies a contract as provided by subsection (2), the company is bound by, and entitled to the benefit of, the contract as if the company had been formed before the contract was entered into and had been a party to the contract.

(4) For the purposes of this section, a contract may be ratified by a company in the same manner as a contract may be made by a company under section 111 and the provisions of that section have effect as if —

(a) the references in that section to making a contract were references to ratifying a contract; and

(b) the reference in subsection (3) of that section to a contract executed, or purporting to have been executed, under the common seal of a company were a reference to a contract ratified, or purporting to have been ratified, under the common seal of a company.

Promoter's liability

116. (1) Where a non-existent company purports to enter into a contract and —

(a) the company is not formed within a reasonable time; or

(b) the company is formed within a reasonable time but does not ratify the contract within a reasonable time after the company was formed,

the other party or each of the parties to the contract may, subject to subsection (3) of this section and to subsection 118 (2), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent company an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the company —

(c) where the company has not been formed as mentioned in paragraph (a) - if the company had been formed and had ratified the contract as provided by subsection (2); or

(d) where the company has been formed as mentioned in paragraph (b) - if the company had ratified the contract as provided by subsection (2),

and the contract had been discharged by reason of a breach of the contract constituted by the refusal or failure of the company to perform an obligation under the contract.

(2) Where —

(a) proceedings are brought to recover damages under subsection (1) in relation to a contract purporting to have been entered into by a non-existent company; and

(b) the company has been formed,

the court in which the proceedings are brought may, if it thinks it just to do so, make either or both of the following orders:

(c) an order directing the company to transfer or pay to a party to the contract who is named in the order property, or an amount not exceeding the value of a benefit, received by the company as a result of the contract;

(d) an order that the company pay the whole or a specified portion of damages that, in those proceedings, the defendant has been, or is, found liable to pay.

(3) Where, in proceeding to recover damages under subsection (1) in relation to a contract purporting to have been entered into by a non-existent company, the court in which the proceedings are brought makes an order under paragraph (2)(c), the court may refuse to award damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

Promoter's liability where contract ratified

117. Where —

(a) a non-existent company purports to enter into a contract;

(b) the company is formed and ratifies the contract as provided by subsection 115(2);

(c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the company to perform all or any of its obligations under the contract; and

(d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the company for damages for breach of the contract,

the court in which the proceedings are brought may, subject to subsection 118(2), if it thinks it just to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the company to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of damages that the company has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

Consent to exemption from liability

118. (1) Where a person purports, whether alone or together with another person or other persons, to execute a contract on behalf of a non-existent company, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, consent to the first-mentioned person being exempted from any liability in relation to the contract.

(2) Where a person has, as provided by subsection (1), consented to another person being exempted from liability —

(a) notwithstanding subsection 116(1), the first-mentioned person is not entitled to recover damages from the other person in relation to the contract; and

(b) a court shall not, in proceedings under subsection 117(1), order that other person to pay to the first-mentioned person any damages, or a proportion of the damages, that the company has been or may be, found liable to pay to the first-mentioned person.

Discharge of promoter's liabilities

119. If —

(a) a non-existent company purports to enter into a contract;

(b) the company if formed; and

(c) the company and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract,

any liabilities to which the person who purported to execute the first-mentioned contract on behalf of the company is subject under section 115, 116, 117 or 118 in relation to the first-mentioned contract (including liabilities under an order made by a court under any of those sections) are, by force of this section, to be deemed to be discharged.

Rights and liabilities to be in substitution for other rights and liabilities

120. Any rights or liabilities of a person under section 115, 116, 117 or 118 (including rights or liabilities under an order made by a court under any of those sections) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from whichever of those sections is applicable, in relation to the contract.

Trustees

121. Where —

(a) a person purports to enter into a contract as trustee for a proposed company; and

(b) the company is formed within a reasonable time but does not ratify the contract within a reasonable time after the company is formed,

then notwithstanding any rule or principle of law or equity, the trustee does not have any right of indemnity against the company in respect of the contract.

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

122. (1) If, at any time, the number of members of a company (joint holders of shares being counted as one person) is reduced —

(a) in the case of a proprietary company - below 2; or

(b) in the case of any other company - below 5,

and the company carries on business for more than 6 months while the number is so reduced, each person who, at a time when the company so carried on business after those 6 months, was a member of the company and was aware that the company was carrying on business with fewer than 2 or 5 members, as the case may be —

(c) is severally liable for the payment of each debt of the company contracted at a time when —

(i) the company so carried on business after those 6 months; and

(ii) he was a member,

and may be severally sued for payment of that debt; and

(d) is guilty of an offence.

(2) Subsection (1) does not apply in relation to a company the whole of the issued shares of which are held by a company that is the holding company of the company.

Certificate authorising application for transfer for incorporation

122A. (1) A company may apply to the Registrar for a certificate authorising it to apply for registration as a company under the Corporations Law of any of the Australian States or the Australian Capital Territory.

(2) An application under subsection (1) must be in the prescribed form and must be accompanied by:

(a) a declaration in writing signed by the directors of the company or, if the company has more than 2 directors, a majority of the directors, to the effect that they have made an inquiry into the affairs of the company and that at a meeting of directors have formed an opinion that the company will be able to pay its debts as they fall due; and

(b) a report in the prescribed form as to affairs of the company, made up to the latest practicable date before the making of the application, showing the assets and liabilities of the company.

(3) On application under subsection (1), the Registrar must issue a certificate if, and only if —

(a) the company has passed a special resolution approving the application for the certificate; and

(b) the company has given to its creditors, in a manner approved by the Registrar, notice of its intention to apply for such a certificate; and

(c) the Registrar is not aware of any failure of the company to comply with any applicable requirement of this Act; and

(d) the Registrar is not aware of any other reason why the certificate should not be granted; and

(e) the Minister has consented to the issuing of the certificate.

(4) A certificate may be issued under subsection (3) subject to such conditions as are specified in the certificate.

(5) With such modifications as are necessary, sections 101, 102, 103 and 104 apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to an application for a certificate under this section as if it were a special resolution under section 101.

Effect of registration of company under Corporations Law of one of the Australian States or the Australian Capital Territory

122B. Where under the provisions of the Corporations Law of one of the Australian States or the Australian Capital Territory, a company is registered as a company under the Corporations Law, the company ceases to be incorporated under this Act from the time at which it is taken, under the provisions of that Corporations Law, to be a company duly incorporated under that Corporations Law.

PART 5 — PROSPECTUSES

Interpretation

123. (1) For the purposes of this Act, if a statement included in a prospectus is misleading in the form or context in which it is included it shall be deemed to be untrue.

(2) For the purposes of the application of section 124 or 125, if forms referred to in the section concerned that are the same or substantially the same are issued to the public or are issued to a section of the public, whether selected as clients of the person issuing the forms or in some other manner, each of the forms shall be deemed to be issued to the public notwithstanding that each form may be used only by the person to whom it is issued.

(3) For the purposes of subsection (2), forms shall not be taken to be issued to the public by reason only that —

(a) they are issued to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent;

(b) they are issued to existing members or debenture holders of a corporation and relate to shares in, or debentures of, that corporation; or

(c) they are issued to existing members of a company in connection with a proposal referred to in section 512 and relate to shares in that company.

(4) A reference in this Part to a statement includes a reference to matter that is not written but, by reason of the form or context in which it appears, conveys a message.

Prohibition of issue of certain documents in relation to proposed corporations

124. (1) It is unlawful to issue —

(a) a form of application for securities of a corporation that is to be formed; or

(b) a form to accompany a deposit of money with, or a loan of money to, a corporation that is to be formed.

(2) Subsection (1) does not apply if —

(a) the form is not issued to the public; and

(b) the invitation or offer to which the form relates is not issued or made to the public.

(3) A corporation that, or other person who, contravenes this section and any officer of such a corporation who is in default are each guilty of an offence.

Penalty: 200 penalty units or imprisonment or both.

Forms of application for shares or debentures to be attached to prospectus

125. (1) A form of application for securities of a corporation or a form to accompany a deposit of money with, or a loan of money to, a corporation shall not be issued by the corporation or by some other person unless the form is attached to a prospectus and a copy of the form and a copy of the prospectus have been registered by the Registrar under this Act or under the repealed laws.

(2) Subsection (1) does not apply if —

(a) the form is not issued to the public; and

(b) the invitation or offer to which the form relates is not issued or made to the public.

(3) A corporation that, or another person who, contravenes this section and any officer of such a corporation who is in default are each guilty of an offence.

Penalty: 200 penalty units or imprisonment or both.

Invitations or offers in relation to borrowing corporation

126. (1) An invitation to the public to subscribe for or purchase debentures of a corporation or an offer to the public of debentures of a corporation for subscription or purchase shall not be made by the corporation or by some other person unless —

(a) a copy of a prospectus in relation to the invitation or offer has been registered by the Registrar under this Act or under the repealed laws;

(b) the prospectus contains an undertaking by the corporation that it will, within 2 months after the acceptance of money as a deposit or loan from a person in response to the invitation or offer, issue to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and

(c) the document is, in accordance with this section, described or referred to in the prospectus and in any other document constituting or relating to the invitation or offer as —

(i) an unsecured note or an unsecured deposit note;

(ii) a debenture or certificate of debenture stock.

(2) Where, pursuant to an invitation or offer referred to in subsection (1), a corporation has accepted from a person money as a deposit or loan, the corporation shall, within 2 months after the acceptance of the money, issue to that person a document that —

(a) acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and

(b) complies with the other requirements of this section.

(3) The document shall be described or referred to in the prospectus, in any other document constituting or relating to the invitation or offer and in the document itself as an unsecured note or an unsecured deposit note, unless, pursuant to section 127 or 128, it may be and is, otherwise described.

Description as mortgage debenture or mortgage debenture stock

127. A document referred to in subsection 126(2) may be described or referred to in the prospectus, in any other document constituting or relating to the invitation or offer or in the document itself as a mortgage debenture or certificate of mortgage debenture stock if there is included in the prospectus —

(a) a statement to the effect that —

(i) the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation or offer is secured by a first mortgage given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan over land vested in the corporation or in any of its guarantor corporations;

(ii) the mortgage has been duly registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in Norfolk Island; and

(iii) the aggregate amount of those moneys and of all other liabilities (if any) secured by the mortgage of that land ranking *pari passu* with the liability to repay those moneys does not exceed 60% of the value of the corporation's interest in that land as shown in the valuation included in the prospectus; and

(b) a copy of a written valuation of the corporation’s interest in the land so mortgaged that shows the nature and extent of the corporation’s interest and was made not more than 6 months before the date of the prospectus by a person who is competent and qualified to make a valuation of land in Norfolk Island and is not an officer of the corporation, of any of its guarantor corporations or of any corporation that is related to either the first-mentioned corporation or any of its guarantor corporations.

Description as debenture or debenture stock

128. A document referred to in subsection 126(2) may be described or referred to in the prospectus, in any other document constituting or relating to the invitation or offer or in the document itself as a debenture or certificate of debenture stock if, pursuant to section 127 it may be, but is not, described or referred to in the prospectus or document as a mortgage debenture or certificate of mortgage debenture stock or there is included in the prospectus a statement to the effect that —

(a) the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation or offer has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or a part of the tangible property of the corporation and of its guarantor corporations or any of them; and

(b) having regard to the particulars in the summary made as mentioned in section 129, the tangible property that constitutes the security for the charge is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such moneys and all other liabilities ranking in priority to, or *pari passu* with, that liability that have been or may be incurred.

Matters to be included in summary

129. The summary referred to in paragraph 128(b) is a summary —

(a) that is made by the registered company auditor who made the report required to be included in the prospectus by paragraph 135(3)(b) and shows in tabular form the aggregate values (calculated as prescribed) of the tangible property of the borrowing corporation and of its guarantor corporations that has been charged to secure the repayment of all moneys and other liabilities referred to in paragraph 128(a), after making such adjustments as are proper to show fairly the tangible property available as security for the charge and, in particular, after making adjustments —

(i) to exclude from those aggregate values such part of the value of shares in or advances to a corporation as is reflected in or depends upon the tangible property of that corporation that is otherwise included in the summary;

(ii) to exclude from those aggregate values such part of the value of shares in a corporation that is related to the borrowing corporation or the guarantor corporation, as the case requires, as is properly attributable to intangible property of first-mentioned corporation; and

(iii) to add to those aggregate values the amount to be raised under the prospectus including the maximum amount of over-subscriptions that the prospectus in accordance with section 141 specifies may be retained; and

(b) shows the amounts outstanding of the aggregate amounts borrowed respectively by the borrowing corporation and by its guarantor corporations and distinguishes between the amounts that will rank for repayment in priority to the proposed issue and the amounts that will rank *pari passu* with that issue;

(c) states by way of note or otherwise the total amount of the values of intangible property excluded in making the adjustments required under paragraph (a);

(d) where the corporation has given a charge over its assets to secure a liability the amount of which may vary from time to time, takes into account the amount of the liability at the date as at which the summary is made up but shows by way of note the further amount that may be advanced under that charge;

(e) where necessary, explains or qualifies by way of note or otherwise any of the matters set out in the summary;

(f) discloses by way of note or otherwise the amount of advances (distinguishing between advances that are secured and advances that are unsecured) by the borrowing corporation to any corporation that is related to the borrowing corporation other than a corporation that is a guarantor corporation in relation to that borrowing corporation that has secured the guarantee by a charge over its property in favour of the trustee for the holders of the debentures of the borrowing corporation; and

(g) discloses by way of note or otherwise the amount of advances (distinguishing between advances that are secured and advances that are unsecured) by a corporation that is a guarantor corporation, or each corporation that is a guarantor corporation, in relation to the borrowing corporation to any corporation that is related to the borrowing corporation, other than the amount of advances to any other corporation that is also a guarantor corporation in relation to the borrowing corporation.

Part not to apply to certain corporations

130. (1) This Part does not apply to a prescribed corporation and this Act does not require a prospectus to be issued in connection with —

(a) an invitation issued by a prescribed corporation to the public to subscribe for or purchase debentures of the corporation; or

(b) an offer made by a prescribed corporation to the public of debentures of the corporation for subscription or purchase.

(2) A reference in subsection (1) to a prescribed corporation is a reference to —

(a) a corporation that is declared by the Registrar, by notice published in the Gazette, to be an authorised dealer in the short term money market; or

(b) a corporation that —

(i) is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act 1959* of the Commonwealth is in force;

(ii) is registered under the *Life Insurance Act 1945* of the Commonwealth or is a corporation the whole of the issued shares in which are held beneficially by a corporation so registered; or

(iii) is a subsidiary of a banking corporation or of a company referred to in subparagraph (i), if the repayment of all existing and future deposits with and loans to the subsidiary are guaranteed by the banking corporation or company,

and is declared by the Registrar, by notice published in the Gazette, to be a prescribed corporation for the purposes of this section.

(3) The Registrar may, by notice published in the Gazette, specify terms and conditions subject to which subsection (1) has effect in relation to a corporation specified in paragraph (2)(b).

Offences

131. A corporation that, or another person who, contravenes or fails to comply with any of the provisions of section 126 and any officer of such a corporation who is in default are each guilty of an offence.

Penalty: (a) in the case of an offence against subsection 126(1) arising out of the issuing of an invitation or the making of an offer without a copy of a prospectus in relation to the invitation or offer having been registered as required by paragraph 126(1)(a) - 200 penalty units or imprisonment or both;

(b) in any other case - 25 penalty units or imprisonment or both.

Application of certain provisions

132. The provisions of this Part relating to the description of a document acknowledging or evidencing, or intended to acknowledge or evidence, the indebtedness of a corporation apply to and in relation to each such document issued after the date of commencement of this Act, notwithstanding anything in a debenture or trust deed issued or executed before that date and in force for the time being and such a document issued after that date shall be described in accordance with the requirements of this Part.

Documents evidencing indebtedness

133. For the purposes of this Part, a document issued by a borrowing corporation certifying that a person specified in the document is, in respect of a deposit with or loan to the corporation, the registered holder of a specified number or value —

(a) of unsecured notes or unsecured deposit notes;

(b) of mortgage debentures or certificates of mortgage debenture stock; or

(c) of debentures or certificates of debenture stock,

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

Registrar may specify manner of description

134. The prospectus and a document issued in connection with or in relation to the prospectus shall describe or refer to the document mentioned in section 133 in the manner required or authorised by the Registrar and shall so describe or refer to the document without any addition to or qualification of the description or reference other than an addition that the Registrar approves or requires in order to indicate the priority of the indebtedness that the document is to evidence.

Contents of prospectuses

135. (1) To comply with the requirements of this Part, a prospectus shall comply with the subsequent provisions of this section.

(2) The prospectus —

(a) shall be printed in type of a size not less than 8 point unless the Registrar, before the issuing or advertising of the prospectus in Norfolk Island, certifies in writing that the type and size of letter are legible and satisfactory;

(b) shall be dated; and

(c) shall, as to one copy, be lodged with the Registrar as required by this Act, shall state that a copy of the prospectus has been so lodged and shall also state, immediately after the statement that a copy has been so lodged, that the Registrar takes no responsibility for the contents of the prospectus.

(3) Where the prospectus relates to shares —

(a) it shall set out particulars as to the minimum amount that, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part of the sums is to be defrayed in some other manner, the balance of the sums, required to be provided in respect of each of —

(i) the purchase price of property purchased or to be purchased that is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) preliminary expenses payable by the corporation;

(iii) brokerage or commission so payable by the corporation to a person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, shares in the corporation;

(iv) the repayment of money borrowed by the corporation in respect of any of the foregoing matters; and

(v) working capital;

(b) it shall contain a report by a registered company auditor (to be headed "Investigating Accountant's Report") containing the prescribed matters and such other matters as the Registrar requires;

(c) it shall set out the prescribed matters and contain the prescribed reports; and

(d) it shall set out such other matters as the Registrar requires and contain such other reports as the Registrar requires.

(4) Where the prospectus is a prospectus pursuant to which the public is to be invited to deposit money with or lend money to a corporation that is a subsidiary of another corporation or a prospectus pursuant to which a corporation that is a subsidiary of another corporation is to make offers to the public to accept moneys deposited with, or moneys lent to, the corporation —

(a) it shall contain a statement whether that other corporation is under a liability to repay those moneys or to pay interest on those moneys; and

(b) where that other corporation is so stated to be under such a liability - it shall also set out full particulars of the nature and extent of the liability, of the circumstances under which the liability arose and of the manner in which the liability is to be discharged.

(5) The prospectus shall contain a statement that no shares or debentures, as the case requires, will be allotted or issued on the basis of the prospectus later than 6 months after the date of the issue of the prospectus.

(6) If the prospectus contains a statement that is made by an expert or is contained in what purports to be a copy of, or extract from, a report, memorandum or valuation of an expert, the prospectus shall state the date on which the statement, report, memorandum or valuation was made and whether it was prepared by the expert for incorporation in the prospectus.

(7) The prospectus shall not contain the name of a person as —

(a) a trustee for holders of debentures of the corporation;

(b) an auditor, banker, solicitor, stockbroker or share broker of the corporation or for or in relation to the issue or proposed issue of shares or debentures; or

(c) a person performing a function in a professional, advisory or other capacity not mentioned in paragraph (a) or (b) for the corporation or for or in relation to the issue or proposed issue of shares or debentures,

unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and, in the case of a company, a copy, verified by a statement in writing of the consent, has been lodged with the Registrar.

(8) The prospectus shall set out the dates of, the parties to and the general nature of, each material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the corporation or a contract entered into more than 2 years before the date of issue of the prospectus.

(9) The prospectus shall state whether application has been, or is proposed to be, made for permission for the shares or debentures to which the prospectus relates to be listed for quotation on the stock market of a stock exchange, and if such an application has been or is proposed to be made, shall specify the stock exchange or stock exchanges to which application has been or is proposed to be made.

(10) The prospectus shall set out —

(a) full particulars of the nature and extent of the interest (if any) of each director or proposed director and of each expert in the promotion of, or in the property proposed to be acquired by, the corporation; or

(b) where the interest of a director, proposed director or expert consists of being a partner in a firm, the nature and extent of the interest of the firm,

with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any persons —

(c) in the case of a director or proposed director - either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the corporation; or

(d) in the case of an expert - for services rendered by him or the firm in connection with the promotion or formation of the corporation.

(11) Where the prospectus offers shares in or debentures of a foreign company, the prospectus shall contain particulars with respect to —

(a) the constituent documents of the foreign company;

(b) the laws, or provisions having the force of law, by or under which the incorporation of the foreign company was effected;

(c) an address in Norfolk Island where the constituent documents, and the laws or provisions, or certified copies of the constituent documents, laws or provisions, may be inspected;

(d) the date on which and the place where the foreign company was or is to be incorporated or formed;

(e) the address of the registered office of the foreign company in Norfolk Island.

(12) The date inserted in a prospectus pursuant to paragraph (2)(b) shall, unless the contrary is proved, be taken to be the date of issue of the prospectus.

(13) Regulations made for the purposes of this section may make different provision in relation to different classes of prospectuses or in relation to prospectuses to be issued in respect of different classes of shares or debentures or different classes of corporations.

(14) A report contained in a prospectus shall either —

(a) show by way of a note any adjustments of the figures of profit and loss or assets and liabilities contained in the report as appear to the person making the report to be necessary; or

(b) make those adjustments and show by way of a note that adjustments have been made and the nature of the adjustments.

(15) Without limiting the generality of any of the provisions of this section, the Registrar may require that a report that is required, pursuant to a provision of this section or to a requirement made under a provision of this section, to be contained in a prospectus shall contain accounts that comply with the requirements set out in the Regulations in force for the time being under subsection 340(11) or with such of those requirements as the Registrar specifies.

(16) Subsection (10) and paragraphs (11)(a), (b) and (c) do not apply in the case of a prospectus issued more than 2 years after the day on which —

(a) in the case of a company - it is incorporated; or

(b) in the case of a foreign company - it is registered as a foreign company in Norfolk Island.

(17) A condition requiring or binding an applicant for shares in or debentures of a corporation to waive compliance with any requirement of this section, or purporting to affect him with notice of a contract, document or matter not specifically referred to in the prospectus is void.

Offences

136. (1) Where a prospectus relating to shares in or debentures of a corporation is issued and the prospectus does not comply with the requirements of this Part, the directors of the corporation and any other person responsible for the prospectus are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(2) In the event of non-compliance with, or contravention of, any of the provisions of this Part, a director or other person responsible for the prospectus does not incur any liability by reason of the non-compliance or contravention if —

(a) as regards matter not disclosed, he proves that he had no knowledge of that matter;

(b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or

(c) the non-compliance or contravention was —

(i) in respect of matter that, in the opinion of the court dealing with the case, was immaterial; or

(ii) such as, in the opinion of that court, having regard to the circumstances of the case, ought reasonably to be excused.

(3) In the event of failure to include in a prospectus a statement with respect to the matters specified in subsection 135(10), a director or other person is not liable in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

Effect of Part — other liabilities

137. This Part does not limit or diminish a liability that a person has under any rule of law or enactment or under this Act apart from section 136.

Certain notices, etc, not to be published

138. (1) In this section —

"notice" includes a circular and an advertisement but does not include a registered prospectus or a report, statement, notice, circular or advertisement the publication of which is permitted under section 139;

"publish" includes issue.

(2) A reference in this section to the publishing of a notice is a reference to the publishing of the notice by any means, including the publishing in a newspaper or periodical, by broadcasting or televising or in a film.

(3) A person shall not publish a notice that —

(a) offers securities to the public for subscription or purchase;

(b) invites the public to subscribe for or purchase securities; or

(c) refers or calls attention, whether directly or indirectly, to —

(i) a prospectus;

(ii) an offer or intended offer to the public for subscription or purchase of securities;

(iii) an invitation or intended invitation to the public to subscribe for or purchase securities; or

(iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in subsection (4).

(4) Subsection (3) does not apply to or with respect to the publishing of a notice that refers to a registered prospectus and —

(a) states that allotments or issues of, or contracts for the subscription for or purchase of, securities to which the prospectus relates will be made only on receipt of a form of application referred to in and attached to a copy of the prospectus but contains no other statements other than statements as to any or all of the following:

(i) particulars of the securities to which the prospectus relates;

(ii) the name of the corporation, the date of its incorporation and the amount of its paid-up capital;

(iii) the general nature of the principal business of the corporation;

(iv) the names, addresses and occupations of the directors of the corporation;

(v) the name and address of each broker and underwriter to the issue and the name of the stock exchange of which each broker or underwriter is a member;

(vi) where the prospectus relates to debentures, the name and address of the trustee for the debenture holders;

(vii) the time and place at which copies of the prospectus and forms of application for the securities to which it relates may be obtained;

(viii) the period during which the offer or invitation contained in the prospectus is open;

(b) is published by the holder of a dealer's licence or an investment adviser's licence, by a recognised dealer or recognised investment adviser or by an exempt dealer within the meaning of the *Securities Industry Act 1980* of the Commonwealth but contains no other statements other than statements as to any or all of the matters referred to in paragraph (a) and a statement as to —

(i) whether the person publishing the notice recommends acceptance of the offer or invitation to which the prospectus relates; and

(ii) the interest (if any) that the person publishing the notice has in the success of the offer or invitation to which the prospectus relates, being an interest that the person has as underwriter or sub-underwriter to the issue of the securities to which the prospectus relates or a relevant interest, within the meaning of the *Securities Industry Act 1980* of the Commonwealth, in those securities; or

(c) is published by the holder of a dealer's licence or an investment adviser's licence, by a recognised dealer or recognised investment adviser or by an exempt dealer within the meaning of the *Securities Industry Act 1980* of the Commonwealth and is accompanied by a copy of the prospectus.

(5) The inclusion in a notice of a statement required by this or some other enactment to be included in the notice does not affect the operation of subsection (4).

(6) A person shall not contravene, or authorise or permit an act that constitutes a contravention of, this section.

(7) Where a notice relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

Certain reports not to be published

139. (1) In this section, unless the contrary intention appears —

"publish" includes issue;

"report" includes a statement, notice, circular and an advertisement, whether or not in writing, but does not include a notice, circular or advertisement the publication of which is permitted under section 138.

(2) A reference in this section to the publishing of a report is a reference to the publishing of the report by any means, including the publishing in a newspaper or periodical, by broadcasting or television or in a film.

(3) A person who is aware that a prospectus relating to an issue of securities —

(a) is in course of preparation by or on behalf of a corporation, or in respect of a proposed corporation, for registration under this Act; or

(b) has been issued by or on behalf of a corporation,

shall not publish a report that is reasonably likely to induce persons to apply for those securities.

(4) Subsection (3) does not apply to or with respect to the publishing of —

(a) a report that relates to affairs of a corporation the name of which is included in the official list of a stock exchange and —

(i) is published only to that stock exchange or to an officer of that stock exchange on behalf of the corporation or by or on behalf of one or more of the directors of the corporation; or

(ii) has been so published;

(b) a report of the whole or part of the proceedings at a general meeting of a corporation the name of which is included in the official list of a stock exchange, being a report that does not contain matter other than matter laid before that meeting;

(c) a report that relates to a corporation and is published by or on behalf of a corporation or by or on behalf of one or more of the directors of the corporation and —

(i) does not contain matter that materially affects affairs of the corporation other than matter previously made available in a registered prospectus, an annual report or a report referred to in paragraph (a) or (b);

(ii) does not contain a reference, whether directly or indirectly, to an offer to the public of securities for subscription or purchase or to an invitation to the public to subscribe for or purchase securities, being an offer or invitation that, when the report is published, is open or is intended to be made or issued, not being a reference to the principal business of the corporation in a case where the principal business of the corporation is the borrowing of money and the provision of finance; and

(iii) is not accompanied by a registered prospectus or a notice described in subsection 138(3) and is a report that the corporation and its directors have taken all reasonable steps to ensure is not published in a form or manner in which it might be associated with a notice as mentioned in subsection 138(3);

(d) a report published on behalf of a corporation by or on behalf of the directors of a corporation with the consent of the Registrar;

(e) a report that is a news report (whether or not with other comment), or is comment made in good faith and is published by a person in a newspaper or periodical or by broadcasting or televising relating to —

(i) a registered prospectus or information contained in a registered prospectus; or

(ii) a report referred to in paragraph (a), (b), (c) or (d),

if none of the following:

(iii) that person;

(iv) an agent or employee of that person;

(v) where the report or comment is published in a newspaper or periodical - the publisher of the newspaper or periodical;

(vi) where the report or comment is published by broadcasting or televising - the operator of the broadcasting or television station by which it is published,

receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities or debentures to which the report or comment relates as an inducement to publish, or as the result of the publication of, the report or comment;

(f) a report where the report is not published —

(i) by or on behalf of a corporation to which the report relates or, whether directly or indirectly, at the instigation of, or by arrangement with, the corporation or the directors of the corporation;

(ii) by or on behalf of the directors or promoters of a proposed corporation to which the report relates; or

(iii) by or on behalf of a person who has an interest in the success of the issue of securities to which the report relates,

and the person publishing the report does not receive and is not entitled to receive any consideration or other benefit from the corporation or from any of the directors of the corporation or any of the directors or promoters of the proposed corporation, or from a person mentioned in subparagraph (iii), as an inducement to publish, or as the result of the publication of, the report; or

(g) a report containing only matter that is prescribed matter for the purposes of this subsection or relates only to a corporation that is, or is included in a class of corporations that is, prescribed for the purposes of this subsection.

(5) A person shall not contravene this section or authorise or permit an act that constitutes a contravention of this section.

(6) Where a report relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

Evidentiary provisions, etc

140. (1) In this section —

"notice" means a notice within the meaning of section 138 or a report within the meaning of section 139;

"publish includes issue.

(2) A person who publishes a notice relating to a corporation or proposed corporation after he has received a certificate that —

(a) specifies the names of 2 directors of the corporation or 2 proposed directors of the proposed corporation and is signed by those directors or proposed directors; and

(b) is to the effect that, by reason of subsection 138(4) or 139(4), section 138 or 139, as the case may be, does not apply to the notice,

is not guilty of an offence under section 138 or 139, as the case may be.

(3) Where a notice to which a certificate under subsection (2) relates is published, each director or proposed director who signed that certificate shall, for the purposes of sections 138 and 139, be deemed to have published the notice.

(4) A person who publishes a notice to which a certificate under subsection (2) relates shall, if the Registrar requires him to do so, forthwith deliver the certificate to the Registrar.

Penalty: 10 penalty units or imprisonment or both.

(5) In proceedings for an offence under section 138 or 139, a certificate that purports to be a certificate under this section is evidence that —

(a) when the certificate was issued, the persons named in the certificate as directors of the corporation or proposed directors of the proposed corporation, as the case may be, were the directors or proposed directors;

(b) the signatures in the certificate purporting to be the signatures of the directors or proposed directors, as the case may be, are those signatures; and

(c) the publication of the notice was authorised by those directors or proposed directors, as the case may be.

(6) Section 138 or 139 or this section does not affect any liability that a person has apart from those sections.

Retention of over-subscriptions

141. (1) A corporation shall not accept or retain subscriptions to an issue of debentures in excess of the amount of the issue as disclosed in the prospectus unless the corporation has expressly specified in the prospectus —

(a) that it reserves the right to accept or retain over-subscriptions; and

(b) a limit on the amount of over-subscriptions that may be accepted or retained.

(2) Subject to section 135 and to any regulations made for the purposes of paragraph 135(3)(c), where a corporation specifies in a prospectus relating to an issue of debentures that it reserves the right to accept or retain over-subscriptions —

(a) the corporation shall not make, authorise or permit a statement or reference as to the asset-backing for the issue to be made or contained in a prospectus relating to the issue, other than a statement or reference to the total assets and the total liabilities of the corporation; and

(b) the corporation shall set out in the prospectus a statement or reference as to the amount that the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

Penalty: 25 penalty units.

Registration of prospectuses

142. (1) A person shall not issue a prospectus unless a copy of the prospectus has first been registered by the Registrar under this Act or by the Registrar of Companies under the repealed laws.

(2) The Registrar shall not register a copy of a prospectus under this Act unless —

(a) the prospectus relates to a company or a registered foreign company;

(b) the copy is signed by each director and by each person who is named in the prospectus as a proposed director of the company or foreign company or by his agent authorised in writing and is lodged with the Registrar on or before the date of issue of the prospectus;

(c) the prospectus appears to comply with the requirements of this Act;

(d) there are also lodged with the Registrar copies, verified by statements in writing, of any consents required by section 145 to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of such a contract not reduced to writing, a memorandum that gives full particulars of the contract and is verified by a statement in writing; and

(e) the Registrar is satisfied on reasonable grounds that the prospectus does not contain a statement or matter that, in a material particular, is untrue or, in the form or context in which it appears, misleading.

(3) If a prospectus is issued without a copy of the prospectus having been registered as required by this section, the corporation and any person who is knowingly a party to the issue of the prospectus are each guilty of an offence.

Penalty: 200 penalty units or imprisonment or both.

(4) A company in respect of which a copy of a prospectus has been registered under this section shall —

(a) cause a true copy of each document referred to in paragraph (2)(d) to be deposited, within 7 days after registration of the copy of the prospectus, at the registered office of the company in Norfolk Island;

(b) shall keep each such copy for a period of at least 6 months after the registration of the copy of the prospectus for the inspection of any person without charge; and

(c) shall make the copy available for inspection by a person who, within that period, asks to inspect it.

Document containing offer of securities for sale deemed to be prospectus

143. (1) Where a corporation allots or issues, or agrees to allot or issue, to a person securities of the corporation with a view to all or any of them being offered for sale to the public, a document by which the offer for sale is made shall, for all purposes, be deemed to be a prospectus issued by the corporation and all laws —

(a) relating to the contents of prospectuses and liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses; and

(b) relating to the offering or to an intended offering to the public of securities for subscription or purchase,

apply and have effect accordingly as if —

(c) the securities had been offered to the public; and (d)persons accepting the offer in respect of any of the securities were subscribers for the securities,

but without prejudice to the liability (if any) of the persons by whom the offer was made in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, unless the contrary is proved, if it is shown that —

(a) an offer of securities for sale to the public was made within 6 months after the allotment or issue or agreement to allot or issue; or

(b) an offer of securities for sale to the public was made, and that, at the date when the offer was made, the corporation had not received the whole of the consideration to be received in respect of the securities,

it is evidence that an allotment or issue of, or an agreement to allot or issue, the securities was made with a view to the securities being offered for sale to the public.

(3) The requirements of this Part as to prospectuses have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4) In addition to complying with the other requirements of this Part, the document making the offer shall state —

(a) the net amount of the consideration received or to be received by the corporation in respect of securities to which the offer relates; and

(b) the place and time at which the contract under which the securities have been or are to be allotted or issued may be inspected.

(5) Where an offer to which this section relates is made by a corporation or a firm, it is sufficient for the purposes of paragraph 142(2)(b) if the document referred to in subsection (1) is signed on behalf of the corporation or firm by 2 directors of the corporation or by members of the firm who constitute not less than one-half of the number of members of the firm, as the case may be,

(6) A director or member may sign by his agent authorised in writing.

(7) For the purposes of this section, an invitation to the public to make offers to purchase securities shall be deemed to constitute an offer of the securities for sale to the public and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for sale to the public that is to be so deemed to be constituted by the invitation.

Allotment or issue of securities where prospectus indicates application for quotation on stock market

144. (1) Subject to this section, where a prospectus in relation to securities states that application has been or will be made to a stock exchange for permission for the securities to be listed for quotation on the stock market of that stock exchange and —

(a) the permission is not applied for in the form for the time being required by that stock exchange before the third day on which that stock exchange is open for business after the date of issue of the prospectus; or

(b) the permission is not granted before the expiration of a period of 8 weeks after the date of issue of the prospectus or such longer period, not exceeding 12 weeks, from the date of issue as is, within that period of 8 weeks, notified to the applicant by or on behalf of the stock exchange,

an allotment or issue, whenever made, on an application pursuant to the prospectus is void and the corporation shall repay, in accordance with the succeeding provisions of this section, any money received by it pursuant to the prospectus.

(2) Where a corporation is liable under subsection (1) to repay money, the money shall be repaid forthwith without interest.

(3) If the money is not so repaid —

(a) where the liability to repay the money arose by reason of paragraph (1)(a) - within 14 days after the third day referred to in that paragraph; or

(b) where the liability to repay the money arose by reason of paragraph (1)(b), within 14 days after —

(i) the period of 8 weeks first referred to in that paragraph; or

(ii) if a longer period has been notified under that paragraph - that longer period,

then, in addition to the liability of the corporation to repay the money, the directors of the corporation are jointly and severally liable to repay the money with interest at the rate of 8% per annum (or, if another rate is prescribed, at that other rate) calculated from the expiration of the 14 days referred to in paragraph (a) or (b), as the case requires.

(4) Where, in relation to securities —

(a) permission is not applied for as specified in paragraph (1)(a); or

(b) permission is not granted as specified in paragraph (1)(b),

the Registrar may, by notice published in the Gazette, on the application of the corporation made before any of the securities are purported to be allotted or issued, exempt the allotment or issue of the securities from the operation of this section.

(5) A director is not liable under this section by reason of default in the repayment of the money if he proves that the default was not due to misconduct or negligence on his part.

(6) Without limiting the application of any of the provisions of this section, this section has effect —

(a) in relation to securities agreed to be taken by a person underwriting an offer of, or an invitation in relation to, those securities contained in a prospectus as if he had applied for those securities pursuant to the prospectus; and

(b) in relation to a prospectus offering shares for sale or inviting offers to purchase shares, as if —

(i) a reference to sale or purchase, as the case may be, were substituted for a reference to allotment;

(ii) the persons by whom the offer is made or the invitation is issued, and not the corporation, were liable under this section to repay money received from applicants, and references to the corporation's liability under this section were construed accordingly; and

(iii) for the reference in subsection (7) to the corporation and any officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer was made or the invitation was issued who knowingly authorised or permitted the default.

(7) All money received by a corporation pursuant to a prospectus as mentioned in the preceding provisions of this section shall be kept in a separate bank account so long as the corporation may become liable to repay it under this section and, if default is made in complying with this subsection, the corporation and any officer of the corporation who is in default are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(8) Where a stock exchange has, within the period applicable under paragraph (1)(b), granted permission subject to compliance with requirements specified by the stock exchange, permission shall be deemed to have been granted by the stock exchange if the directors have given to the stock exchange an undertaking in writing to comply with the requirements of the stock exchange, but if such an undertaking is not complied with, each director who is in default is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(9) A person shall not issue a prospectus inviting persons to subscribe for, or offering to accept subscriptions for, securities, being a prospectus that includes —

(a) an untrue statement that permission has been granted for those securities to be dealt in or quoted or listed for quotation on a stock market of a stock exchange; or

(b) a statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on, or on a stock market of, a stock exchange, or to any requirements of a stock exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the stock exchange within 3 days after the issue of the prospectus.

(10) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section, or purporting to do so, is void.

Expert's consent to issue of prospectus

145. (1) A prospectus in relation to a corporation that includes a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless —

(a) the expert has given, and has not, before delivery of a copy of the prospectus for registration, withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included; and

(b) there appears in the prospectus a statement that the expert has given, and has not withdrawn, his consent.

(2) If a prospectus is issued in contravention of this section, the corporation and any person who is knowingly a party to the issue of the prospectus are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

Civil liability for untrue statement or non-disclosure

146. (1) Subject to this section, where a prospectus is issued in relation to a corporation, a person who —

(a) is a director of the corporation at the time of the issue of the prospectus;

(b) authorised or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) is a promoter of the corporation; or

(d) authorised or caused the issue of the prospectus,

is liable to pay compensation to a person who subscribed for or purchased a securities on the faith of the prospectus for any loss or damage sustained by reason of an untrue statement in the prospectus or by reason of the non-disclosure in the prospectus of a matter of which he had knowledge and that he knew to be material.

(2) Notwithstanding anything in subsection (1), where the consent of an expert to the issue of a prospectus is required and the expert has given that consent, the expert is not, by reason only of having given that consent, liable under subsection (1) as a person who has authorised or caused the issue of the prospectus except in respect of —

(a) an untrue statement in the prospectus made by him and purporting to have been made by him as an expert; and

(b) a non-disclosure in the prospectus of material matter for which he is responsible in his capacity or purported capacity as an expert.

(3) For the purposes of subsection (1), a person who is named in a prospectus as —

(a) a trustee for holders of debentures of the corporation;

(b) an auditor, banker, solicitor, stockbroker or share broker of the corporation or for or in relation to the issue or proposed issue of securities; or

(c) a person performing a function in a professional, advisory or other capacity not mentioned in paragraph (a) or (b) for the corporation or for or in relation to the issue or proposed issue of securities,

shall not, for that reason alone, be taken to have authorised the issue of the prospectus.

(4) For the purposes of subsection (1), if a statement is contained in a report or memorandum that appears on the face of, or is issued with, a prospectus, or is incorporated by reference in a prospectus, whether the reference occurs in the prospectus or in some other document, the statement shall be deemed to be in the prospectus.

Defences to liability

147. (1) Subject to subsection (2), a person other than a person to whom section 148 applies is not liable under subsection 146 (1) if he proves —

(a) that, having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent;

(b) that the prospectus was issued without his knowledge or consent and —

(i) when he became aware of the issue of the prospectus, he forthwith gave reasonable public notice that it was issued without his knowledge; or

(ii) he gave reasonable public notice that the prospectus was issued without his consent forthwith after it was issued,

as the case may be;

(c) that, after the issue of the prospectus and before an allotment, issue or sale under the prospectus, he, on becoming aware of an untrue statement in the prospectus, withdrew his consent to the issue of the prospectus and gave reasonable public notice of the withdrawal and of the reason for the withdrawal; or

(d) that —

(i) as regards each untrue statement not purporting to be made as mentioned in paragraph (c), he had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities believe, that the statement was true;

(ii) as regards each untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert, it fairly represented the statement, or was a correct copy of, or a fair extract from, the report or valuation, and he had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 145 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to the defendant's knowledge, before any allotment, issue or sale under the prospectus; and

(iii) as regards each untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a fair representation of the statement or a correct copy of, or a fair extract from, the document.

(2) Subsection (1) does not apply in respect of a person who is liable, by reason of his having given a consent required of him by section 145, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

Defence available to experts

148. A person who, apart from this subsection, would under subsection 146(1) be liable, by reason of his having given a consent required of him by section 145, as a person who has authorised the issue of a prospectus, in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves that —

(a) having given his consent under section 145 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;

(b) after a copy of the prospectus was lodged with the Registrar and before any allotment, issue or sale of securities under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) he was competent to make the statement and that he had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities under the prospectus believe, that the statement was true.

Indemnification of persons incorrectly named

149. Where —

(a) a prospectus in relation to a corporation contains the name of a person as a director of the corporation, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue of the prospectus; or

(b) the consent of a person is required under section 145 to the issue of a prospectus and he has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the corporation (except any of them without whose knowledge or consent the prospectus was issued) and any other person who authorised or caused the issue of the prospectus are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he is liable —

(c) by reason of his name having been so inserted in the prospectus;

(d) by reason of the inclusion in the prospectus of a statement purporting to be made by him as an expert; or

(e) in defending an action or other legal proceeding brought against him by reason of his name having been so inserted in the prospectus or the inclusion in the prospectus of such a statement.

Criminal liability for untrue statement or non-disclosure

150. (1) Where in a prospectus there is an untrue statement or non-disclosure, each person who authorised or caused the issue of the prospectus is guilty of an offence unless he proves —

(a) that the statement or non-disclosure was immaterial:

(b) that he had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that that the statement was true or that the non-disclosure was immaterial; or

(c) where there was in the prospectus a non-disclosure - that the non-disclosure was inadvertent.

Penalty: 200 penalty units or imprisonment or both.

(2) For the purposes of subsection (1), if a statement is contained in a report or memorandum that appears on the face of, or is issued with, a prospectus, or is incorporated by reference in a prospectus, whether the reference occurs in the prospectus or in some other document, the statement shall be deemed to be in the prospectus.

(3) A person shall not be taken for the purposes of this section to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Part to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

PART 6 — RESTRICTIONS ON ALLOTMENT OF SHARES AND VARIATION OF CONTRACTS

Prohibition of allotment unless minimum subscription received

151. (1) A company shall not make an allotment of shares in the company that have been offered to the public or in respect of which an invitation has been issued to the public unless —

(a) the minimum subscription has been subscribed; and

(b) the company has received the sum payable on application for the shares so subscribed.

(2) For the purposes of subsection (1), where a company has, whether before or after the commencement of this Act, received a cheque for the sum payable on application for an allotment of shares in the company, the sum shall be deemed not to have been received by the company until the cheque has been paid by the bank on which it is drawn.

(3) In ascertaining for the purposes of subsection (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, there shall, in respect of each share for the allotment of which an application has been made, be deemed to have been subscribed an amount equal to —

(a) the nominal value of that share; or

(b) if the share is, or is to be, issued at a premium - the sum of the nominal value of the share and the amount of the premium payable on the share,

less any amount payable otherwise than in cash.

(4) The amount payable on application for each share that has been offered to the public or in respect of which an invitation has been issued to the public shall be not less than 5% of the nominal amount of the share.

Repayment of subscriptions

152. (1) If the conditions referred to in paragraphs 151(1)(a) and (b) have not been satisfied on the expiration of 4 months after the issue of the prospectus, the company is liable to repay, as provided by this section, all money received from applicants for shares.

(2) Where a company is liable under subsection (1) to repay money received from applicants for shares —

(a) the money shall be repaid without interest within 7 days after the company becomes so liable; and

(b) if the money is not repaid within 7 days after the company becomes so liable —

(i) the directors of the company are, subject to subsection (3), jointly and severally liable to repay the money with interest at the rate of 8% per annum (or if another rate is prescribed, at that other rate) calculated from the expiration of the period of 7 days; and

(ii) each director of the company is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(3) A director is not liable under subparagraph (2)(b)(i), and is not guilty of an offence under subparagraph (2)(b)(ii), if he proves that the default in the repayment of the money was not due to misconduct or negligence on his part.

Allotment voidable at applicant's option

153. (1) An allotment made by a company to an applicant in contravention of section 151 is voidable at the option of the applicant and is so voidable notwithstanding that the company is in the course of being wound up.

(2) An option referred to in subsection (1) is exercisable by notice in writing served on the company —

(a) in the case of an allotment made by a company that is not required to hold a statutory meeting - within one month after the date of the allotment; and

(b) in the case an allotment made by a company that is required to hold a statutory meeting —

(i) if the company holds the statutory meeting within the period required by this Act - within one month after the date of the allotment or of the holding of the statutory meeting, whichever is the later; or

(ii) if the company fails to hold the statutory meeting within that period - within one month after the expiration of that period or the date of the allotment, whichever is the later.

Certain conditions void

154. A condition requiring or binding an applicant for shares to waive compliance with any requirement of this Part, or purporting to do so, is void.

Securities not to issue after 6 months

155. A company shall not allot or issue, and an officer or promoter of a company or a proposed company shall not authorise or permit to be allotted or issued, securities on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus.

Penalty: 25 penalty units or imprisonment or both.

Validity of allotment

156. Where an allotment or issue of securities is made on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus, the allotment is not, by reason only of that fact, voidable or void.

Liability of directors for contravention

157. (1) A director of a company who knowingly contravenes, or permits or authorises a contravention of, any of the provisions of this Part is guilty of an offence and is liable, in addition to the penalty or punishment for the offence, to compensate the company and any person to whom an allotment has been made in contravention of this Part for any loss, damages or costs that the company or the person has sustained or incurred by reason of the allotment.

(2) Proceedings for the recovery of any such compensation shall not be commenced after the expiration of 2 years from the date of the allotment.

Application moneys to be held in trust until allotment

158. (1) Where, whether before or after the commencement of this Act, securities have been offered to the public or invitations have been issued to the public in respect of securities, all application moneys and other moneys paid, whether before or after the commencement of this Act, by an applicant on account of the securities before their allotment or issue shall, until the allotment or issue is made, be held by the company in trust for the applicant in a bank account established and kept by the company solely for the purpose of depositing application moneys and other moneys paid by applicants for those securities.

(2) A bank is not under an obligation or duty to inquire into or see to the proper application of moneys deposited with it as mentioned in subsection (1) so long as the bank acts in good faith.

(3) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

Restriction on varying contracts referred to in prospectus

159. A company shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus unless the variation is made subject to the approval of the statutory meeting.

PART 7 — SHARES AND SHARE CAPITAL

Division 1 — General Provisions with Respect to Shares

Returns as to allotments

160. (1) Where a company makes an allotment of its shares, or shares in a company are to be deemed under subsection (4) to have been allotted, the company shall, within one month after the allotment is made or is to be deemed to have been made, lodge with the Registrar a return stating —

(a) the number and nominal amounts of the shares comprised in the allotment;

(b) the amount (if any) that has been paid or is to be deemed to have been paid or is due and payable on the allotment of each share;

(c) where the capital of the company is divided into shares of different classes - the class of shares in which each share comprised in the allotment is included; and

(d) subject to subsection (2), the full name, or the surname and at least one Christian or given name and other initials, and the address of each allottee and the number and class of shares allotted to him.

(2) The particulars mentioned in paragraph 1(a) need not be included in a return where a company to which subsection 330(1) applies —

(a) has allotted shares for cash; or

(b) has allotted shares for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

(3) Where shares in a company are alloted, or are to be deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company shall lodge with the return a certified copy of the contract and shall, at the same time, produce the original contract to the Registrar.

(4) Where shares in a company are allotted, or are to be deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made —

(a) pursuant to a contract not reduced to writing;

(b) pursuant to a provision in the memorandum or articles of the company;

(c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders; or

(d) pursuant to the application of moneys held by the company in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled,

the company shall lodge with the return a statement containing particulars of the allotment.

(5) For the purposes of this section, shares in a company that the subscribers to the memorandum have agreed in the memorandum to take shall be deemed to have been allotted to those subscribers on the date of the incorporation of the company.

(6) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Differences in calls and payments, reserve liability, etc

161. (1) A company, if so authorised by its articles, may —

(a) on the issue of shares - make arrangements for varying the amounts and times of payment of calls as between shareholders;

(b) accept from a member the whole or part of the amount remaining unpaid on shares although no part of that amount has been called up; and

(c) where different amounts are paid up on different shares - pay dividends in proportion to the amount paid up on each share.

(2) A limited company may, by special resolution, determine that a portion of its share capital that has not already been called up is not capable of being called up except in the event and for the purposes of the company being wound up.

(3) Where such a resolution is passed, the portion of the company's share capital to which the resolution relates is not capable of being called up except in the event and for the purposes of the company being wound up.

(4) The resolution does not affect rights acquired by a person before the passing of the resolution.

Share warrants

162. (1) A company shall not issue a share warrant but share warrants issued under the repealed laws remain in force as though this Act had not been enacted.

(2) The bearer of a share warrant may surrender it to the company in exchange for a corresponding share certificate and the company shall enter his name in the register of members of the company.

(3) If the bearer of a share warrant issued on or after 1 September 1985 has not, on or before 31 August 1986, surrendered it for a share certificate, the share warrant ceases to have effect and the bearer of it ceases to be a shareholder of the company.

Restrictions on application of capital

163. (1) Except as provided by section 164, a company shall not apply any of its shares or capital money, either directly or indirectly, in making a payment to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company, whether the shares are or the money is so applied by being added to the purchase price of property acquired by the company or to the contract price of work to be executed for the company or the money is paid out of the nominal purchase price or contract price or otherwise.

(2) Without limiting the generality of subsection (1), except as provided by section 165, a company shall not issue shares at a discount.

(3) If a company contravenes this section, the company is, notwithstanding section 660, not guilty of an offence against this Act but each officer of the company who is in default is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(4) Where —

(a) a person is convicted of an offence under this section in relation to a company; and

(b) the court by which he was convicted is satisfied that the company has suffered loss or damage as a result of the act that constituted the offence,

that court may, in addition to imposing a penalty, order the convicted person to pay compensation to the company of such amount as that court specifies and the order may be enforced as if it were a judgment of that court.

(5) Where a contravention of this section has taken place —

(a) if a person other than the company concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the company may, whether or not that person or some other person has been convicted of an offence under subsection (3) in relation to the contravention, recover from the person as a debt due to the company by action in a court of competent jurisdiction an amount equal to the profit; and

(b) where the company concerned has suffered loss or damage as a result of the contravention - the company may recover an amount equal to the loss or damage from a person who is in default, whether or not that person or some other person has been convicted of an offence under subsection (3) in relation to the contravention, as a debt due to the company by action in a court of competent jurisdiction.

Power to pay brokerage or commission

164. (1) Subject to subsection (2), a company may make a payment by way of brokerage or commission to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company if —

(a) the payment is not prohibited by the memorandum or articles;

(b) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in the prospectus in respect of the shares or, if there is no such prospectus, in a statement lodged with the Registrar before the company becomes liable to make the payment; and

(c) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in that prospectus or statement.

(2) Subsection (1) does not permit a company to make a payment by way of brokerage or commission in respect of shares in the company if —

(a) the amount of the payment; or

(b) some other payment or other payments by way of brokerage or commission has or have been made by the company in respect of those shares, the sum of the amount of the first-mentioned payment and of the other payment or payments,

exceeds —

(c) 10% of the total of the amount payable in respect of the shares upon their allotment; or

(d) such amount (if any), or an amount calculated at such rate (if any), as is authorised by the articles,

whichever is the less.

(3) A vendor to or promoter of a company or person who receives payment in money or shares from a company may apply a part of the money or shares so received in making a payment that would, if it were made directly by the company, be lawful under this section.

Issue of shares at a discount

165. (1) Subject to this section, a company may issue at a discount shares included in a class of shares already issued if —

(a) the issue of the shares at a discount —

(i) is authorised by a resolution passed in general meeting of the company; and

(ii) is confirmed by an order of the Court;

(b) the resolution specifies the maximum rate of discount at which the shares are to be issued;

(c) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows; and

(d) the shares are first offered to each holder of shares in the company of that class in proportion to the number of shares of that class held by him.

(2) The Court may make an order confirming the issue on such terms and conditions as are just.

(3) A prospectus relating to the issue of the shares shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) If default is made in complying with subsection (3), the company and any officer of the company who is in default are each guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(5) An offer made for the purposes of paragraph (1)(d) shall be made by notice specifying the number of shares to which the member is entitled and specifying a period, being not less than 28 days from the date of the notice, within which the offer may be accepted.

(6) If an offer in respect of shares made in accordance with subsection (5) is not accepted within the period specified in the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

Issue of shares at a premium

166. (1) Where a company issues shares for which a premium is received by the company, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called the "Share Premium Account", and the provisions of this Act relating to the reduction of the share capital of a company, other than subsection 172(2), apply, subject to this section, as if the amount to the credit of the Share Premium Account were paid-up share capital of the company.

(2) An amount to the credit of the Share Premium Account may be applied —

(a) in paying up unissued shares to be issued to members of the company as fully paid shares;

(b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;

(c) in the payment of dividends that are to be satisfied by the issue of shares;

(d) in writing off —

(i) the preliminary expenses of the company; or

(ii) the expenses of, or the payment made in respect of or discount allowed on, an issue of securities of the company; or

(e) in providing for the premium payable on redemption of debentures or redeemable preference shares.

(3) Where an amount is applied as mentioned in subsection (2), the amount to the credit of the account shall be reduced accordingly.

Issue of redeemable preference shares

167. (1) Subject to this section, a company having a share capital may, if so authorised by its articles, issue preference shares that are, or at the option of the company are to be, liable to be redeemed.

(2) The redemption of shares so issued shall not be taken to reduce the authorised share capital of the company.

(3) Shares so issued shall not be redeemed —

(a) unless they are fully paid-up;

(b) except on such terms and in such a manner as are provided by the articles; and

(c) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

(4) The premium (if any) payable on redemption shall be provided for out of profits or out of the Share Premium Account.

(5) Where redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall, out of profits that would otherwise have been available for dividends, be transferred to a an account to be called the "Capital Redemption Reserve" a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company, other than subsection 172(2), apply, except as provided by this section, as if the amount to the credit of the Capital Redemption Reserve were paid-up share capital of the company.

(6) Where, pursuant to this section, a company has redeemed or is about to redeem preference shares, it may issue shares up to the aggregate of the nominal values of the shares redeemed or to be redeemed as if those preference shares had never been issued.

(7) The Capital Redemption Reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully-paid shares.

(8) Where a company redeems redeemable preference shares, it shall, within 14 days after so doing, lodge with the Registrar a notice relating to the shares redeemed.

(9) Shares shall be taken to have been redeemed notwithstanding that a cheque given in payment of the amount payable upon redemption of the shares has not been presented for payment.

(10) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Alteration of share capital

168. (1) A company may, if so authorised by its articles, by resolution passed in general meeting, alter the provisions of its memorandum in any one or more of the following ways:

(a) by increasing its share capital by the creation of new shares of such amount as is specified in the resolution;

(b) by consolidating and dividing all or any of its share capital into shares of larger amount than its existing shares;

(c) by converting, or providing for the conversion of, all or any of its paid-up shares into stock or re-converting, or providing for the reconversion of, that stock into paid-up shares of any denomination;

(d) by subdividing its shares or any of them into shares of smaller amount than is fixed by the memorandum, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as it was in the case of the share from which the share of smaller amount is derived;

(e) by cancelling shares that, at the date of the passing of the resolution to that effect, have not been taken or agreed to be taken by a person or have been forfeited and by reducing the amount of the company's share capital by the amount of the shares so cancelled.

(2) An alteration made as mentioned in subsection (1) takes effect on the date of the resolution or on such later date as is specified in the resolution.

(3) A cancellation of shares under this section shall be deemed not to be a reduction of share capital.

(4) An unlimited company having a share capital may, by a resolution passed for the purposes of subsection 97(1), do either or both of the following:

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital may be called up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital may not be called up except in the event and for the purposes of the company being wound up.

Validation of improper issue of shares

169. (1) Where a company has purported to issue or allot shares and —

(a) the creation, issue or allotment of those shares is invalid by reason of a provision of this Act or of the memorandum or articles of the company or for other reason; or

(b) the terms of the purported issue or allotment are inconsistent with or are not authorised by such a provision,

the Court may, upon application made by the company, 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 to do so, make an order —

(c) validating the purported issue or allottment of those shares; or

(d) confirming the terms of the purported issue or allotment of the shares,

or both.

(2) The company shall lodge an office copy of an order made under subsection (1) with the Registrar, and, when the order is lodged, the shares to which the order relates shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment of the shares.

Special resolution for reduction of share capital

170. (1) Subject to confirmation by the Court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, the company may do all or any of the following:

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) cancel any paid-up share capital that has been lost or is not represented by available assets;

(c) pay off any paid-up share capital that is in excess of the needs of the company,

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

(3) A reduction in the paid-up share capital of a company does not of itself operate to reduce the nominal share capital of the company.

Objections by creditors

171. (1) Where a proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to a shareholder of paid-up share capital, and in any other case if the Court so directs —

(a) each creditor of the company who, at the date fixed by the Court, is entitled to a debt or claim that, if that date were the date of commencement of the winding up of the company, would be admissible in proof against the company, is entitled to object to the reduction;

(b) the Court shall, unless it is satisfied on affidavit that there are no such creditors, settle a list of the names of creditors 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 amount of their debts or claims and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered; and

(c) where a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not determined, does not consent to the reduction, the Court may dispense with the consent of that creditor subject to the company securing payment of his debt or claim by appropriating as the Court directs —

(i) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it - the full amount of the debt or claim; or

(ii) if the company does not so admit and is not so willing or if the amount is contingent or not ascertained - an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(2) The Court may, having regard to any special circumstances, direct that all or any of the provisions of subsection (1) shall not apply in respect of creditors included in a particular class of creditors.

Confirmation of reduction

172. (1) The Court may, if satisfied with respect to each creditor who under subsection 171(1) is entitled to object, that —

(a) his consent to the reduction has been obtained;

(b) his debt has been discharged or secured; or

(c) his claim has determined or has been secured,

make an order confirming the reduction on such terms and conditions as are just.

(2) The order shall show —

(a) the amount of the share capital of the company as altered by the order;

(b) the number of shares into which the share capital is to be divided;

(c) the amount of each share; and

(d) any amount that at the date of the order is to be deemed to be paid up on each share.

Retrospective effect

173. A company shall not act upon a resolution for the reduction of share capital before the date on which a certified copy of the resolution and an office copy of the order of the Court have been lodged with the Registrar but such a resolution may specify a date, earlier than the first-mentioned date but not earlier than the date of the resolution, as the date from which the reduction of capital is to have effect.

Certificate of Registrar

174. A certificate of the Registrar stating that a certified copy of the resolution and an office copy of the order made under subsection 172(1) have been registered by the Registrar is conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with in respect of the company and that the matters referred to in subsection 172(1) are as stated in the order.

Deemed alteration of memorandum

175. Upon lodgement of a copy of an order as mentioned in section 173, the particulars shown in the order pursuant to section 172 shall be deemed to be substituted for the corresponding particulars in the memorandum and the substitution shall be deemed to be an alteration of the memorandum for the purposes of this Act.

Liability of members where creditor unaware of proceedings

176. (1) A member of a company, past or present, is not liable in respect of a share in the company to a call or contribution that exceeds the amount by which the amount of the share as fixed by an order made under section 172 exceeds the amount paid, or the reduced amount (if any) that is to be deemed to have been paid, on the share, as the case may be.

(2) Subject to subsection (3), where the name of a creditor who is entitled under subsection 171(1) to object to a reduction is, by reason of his not being aware of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the lists of creditors, and after the reduction the company is unable, in accordance with of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim —

(a) each person who was a member of the company at the date of the registration of the office copy of the order for reduction is liable to contribute for the payment of that debt or claim an amount not exceeding the amount that he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and

(b) if the company is wound up, the Court, on the application of such a creditor and on proof of his not being aware of the proceedings for reduction or of their nature and effect with respect to his claim, may, settle accordingly a list of the names of persons liable to contribute by reason of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding up.

(3) Subsection (1) does not affect the rights of the contributories among themselves.

Offences

177. An officer of a company who —

(a) knowingly conceals the name of a creditor entitled to object to a reduction in the share capital of the company; or

(b) knowingly misrepresents the nature or amount of the debt or claim of a creditor of the company,

is guilty of an offence.

Penalty: 100 penalty units or imprisonment, or both.

Certain benefits not reduction of capital

178. (1) The granting by a company to a member of the company of a right to occupy or use land, or a building or part of a building, owned or held under lease by the company, whether for consideration or not, shall not be taken to be a reduction of the share capital of the company if it is made pursuant to a provision of the memorandum or articles of the company, whether the provision provides for consideration to be given for it or not.

(2) Subsection (1) applies whether the grant is by way of lease, under-lease, licence or otherwise, and whether or not, in the case of a grant in respect of a building or part of a building, the grant also entitles the member to a right of use of a garage, outbuilding or other structure or of a passage, stairway or convenience of a building or of land appurtenant to the building or part of the building.

Unlimited companies

179. Sections 170 to 178 (inclusive) do not apply to an unlimited company but this Act does not prevent an unlimited company from reducing in any way its share capital, including an amount at the credit of its Share Premium Account.

Registrar to be informed of special rights

180. (1) Where a company allots shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 316 applies, the company shall, unless the rights attached to the shares are in all respects the same as the rights attached to shares previously allotted, lodge with the Registrar, within one month after the allotment of the shares, a statement relating to those rights.

(2) Where —

(a) shares in a company that were not previously divided into classes are so divided; or

(b) shares in a company that are of one class are converted into shares of another class,

the company shall, within one month after the division or conversion, lodge with the Registrar a statement showing particulars of the division or conversion.

(3) If a company contravenes this section, the company and any officer of the company who is in default are each guilty of an offence.

Rights of holders of classes of shares

181. **(1)** This section applies to a company that has a share capital that is divided into classes of shares.

(2) Where —

(a) rights are attached to shares included in a class of shares;

(b) provision is not made by the memorandum or articles for the variation or abrogation of those rights; and

(c) those rights are not declared by the memorandum or articles to be unalterable,

the company may, with the consent in writing of the holders of three-quarters of the issued shares included in that class or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

(3) Where —

(a) rights are attached to shares included in a class of shares; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a particular proportion of the holders of the issued shares included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares,

the memorandum or articles shall not be altered so as to vary or abrogate, or authorise the variation or abrogation, of those rights except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

(4) Where rights are attached to shares included in a class of shares and —

(a) those rights are at any time varied or abrogated; or

(b) the memorandum is, or the articles are, altered so as to authorise the variation or abrogation of those rights,

the holders of not less than 10% in the aggregate of the issued shares included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Registrar and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) For the purposes of this section, the allotment by a company of preference shares ranking equally with existing preference shares shall be deemed to be a variation of the rights attached to those existing preference shares unless the allotment of the first-mentioned shares was authorised by the terms of allotment of the existing preference shares or by the memorandum or articles in force at the time when the existing preference shares were allotted.

(9) Section 101 or 107 does not affect the operation of this section.

Rights of holders of shares

182. **(1)** This section applies to a company that has a share capital that is not divided into classes of shares.

(2) Where —

(a) rights are attached to shares in a company;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) those rights are not declared by the memorandum or articles to be unalterable,

the company may, with the consent in writing of the holders of three-quarters of the issued shares in the company or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

(3) Where —

(a) rights are attached to shares in a company; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a particular proportion of the holders of the issued shares in the company or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares,

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those share or with the sanction of such a resolution passed at a meeting of the holders of those shares.

(4) Where rights are attached to shares in a company and —

(a) those rights are at any time varied or abrogated; or

(b) the memorandum is or the articles are altered so as to authorise the variation or abrogation of those rights,

the holders of not less than 10% of the issued shares in the company may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their numbers as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the shareholders of the company, set aside the variation, abrogation or alteration and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Registrar and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) For the purposes of this section —

(a) the allotment by a company of shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 316 applies shall be deemed to be a variation of the rights attached to shares previously issued unless the rights attached to the first-mentioned shares are in all respects the same as the rights attached to shares previously issued; and

(b) the division of shares in a company into classes of shares shall be deemed to be a variation of the rights attached to those shares unless, in relation to each share in the company, the rights attached to that share are in all respects the same after the division as they were before the division.

(9) Section 101 or 107 does not affect the operation of this section.

Rights of classes of members

183. (1) This section applies to a company that does not have a share capital.

(2) Where —

(a) members of a company included in a class of members have special rights;

(b) provision is not made by the memorandum or articles for the variation or abrogation of those rights; and

(c) those rights are not declared by the memorandum or articles to be unalterable,

the company may, with the consent in writing of three-quarters of the members included in that class or with the sanction of a special resolution passed at a meeting of members included in that class, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

(3) Where —

(a) members of the company included in a class of members have special rights; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a particular proportion of the members included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the members included in that class,

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the members included in that class or with the sanction of such a resolution passed at a meeting of those members.

(4) Where members of the company included in a class of members have special rights and —

(a) those rights are varied or abrogated; or

(b) the memorandum is or the articles are altered so as to authorise the variation or abrogation of those rights,

members included in that class who constitute not less than 10% in the aggregate of the members included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation, abrogation or alteration does not have effect until confirmed by the Court.

(5) An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration was made and may be made, on behalf of the members entitled to make the application, by such one or more of their number as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Registrar and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) Section 101 or 107 does not affect the operation of this section.

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

184. (1) A company shall not allot preference shares or convert issued shares into preference shares unless there are set out in the memorandum or articles the rights of the holders of those preference shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(2) If a company contravenes this section, the company and any officer of the company who is in default are each guilty of an offence.

Register of options

185. (1) A company shall keep a register of options granted to persons to take unissued shares in the company.

(2) The company shall, within 14 days after the grant of such an option, enter in the register the following particulars:

(a) the name and address of the holder of the option;

(b) the date on which the option was granted;

(c) the number and description of the shares in respect of which the option was granted;

(d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;

(e) the consideration (if any) for the grant of the option;

(f) the consideration (if any) for the exercise of the option or the manner in which that consideration is to be ascertained or determined;

(g) such other particulars are prescribed.

(3) The register is evidence of a matter inserted in the register as required or authorised by this Act.

(4) The register shall be open for inspection —

(a) by a member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(5) A person may request a company to furnish him with a copy of the register or of part of the register and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar approves; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as the Registrar approves.

(6) A company shall keep, at the place where the register is kept, a copy of each instrument by which an option to take up unissued shares in the company is granted and, for the purposes of subsections (4) and (5), those copies shall be deemed to be part of the register.

(7) Notwithstanding subsection (6), a company is not required to keep a copy of an instrument by which an option has been granted if the option has been granted official quotation by a stock exchange.

(8) Failure by a company to comply with any of the provisions of this section in relation to an option does not affect any rights in respect of the option.

(9) If default is made by complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Options over unissued shares

186. (1) An option granted by a public company that enables a person to take up unissued shares in the company after a period of 5 years has elapsed from the date on which the option was granted is void.

(2) Subsection (1) does not apply where the holders of debentures of a company have an option to take up shares in the company by way of redemption of the debentures.

Payment of interest out of capital in certain cases

187. (1) Where shares in a company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or the provision of plant that cannot be made profitable for a long period, the company may pay interest on so much of that share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision.

(2) Such a payment shall not be made unless it is —

(a) authorised by the articles or by special resolution; and

(b) approved by the Court.

(3) Before approving the payment, the Court may, at the expense of the company, appoint a person to inquire into and report as to the circumstances and may require the company to give security for the payment of the costs of the inquiry.

(4) The payment shall be made for such period only as the Court determines but that period shall not in any case extend beyond a period of 12 months after the works or buildings have been completed or the plant has been provided.

(5) The rate of interest shall not exceed 8% per annum or, if another rate is prescribed, that other rate.

(6) The payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Division 2 — Company Dealing in its Shares

References to acquisition

188. A reference in this Division to an acquisition or proposed acquisition of shares or units of shares is a reference to an acquisition or proposed acquisition by way of purchase, subscription or otherwise.

Company financing dealings in its shares

189. (1) Except as otherwise provided by this Act, a company shall not —

(a) whether directly or indirectly, in any way, give financial assistance for the purpose of, or in connection with —

(i) the acquisition by a person, whether before, or at the same time as, the giving of the financial assistance, of shares or units of shares in the company or in a holding company of the company; or

(ii) the proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company;

(b) whether directly or indirectly, in any way —

(i) acquire shares or units of shares in the company; or

(ii) purport to acquire shares or units of shares in a holding company of the company; or

(c) whether directly or indirectly, in any way, lend money on the security of —

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company of the company.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt.

(3) For the purposes of this section, if —

(a) a company has given financial assistance for purposes that included a purpose referred to in paragraph(1)(a); and

(b) the purpose so referred to was a substantial purpose of the giving of the financial assistance,

the company shall be taken to have given the financial assistance for the purpose so referred to.

(4) For the purposes of this section, if, when financial assistance was given to a person, the company was aware that the financial assistance would financially assist —

(a) the acquisition by a person of shares or units of shares in the company or in its holding company; or

(b) where shares in the company had already been acquired - the payment by a person of any unpaid amount of the subscription payable for the shares or of any premium payable in respect of the shares, or the payment of any calls on the shares,

the company shall be deemed to have given financial assistance in connection with an acquisition or proposed acquisition referred to in paragraph (1)(a).

(5) If a company contravenes subsection (1), the company is, notwithstanding section 660, not guilty of an offence but each officer of the company who is in default is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Order for compensation

190. (1) Where —

(a) a person is convicted of an offence under subsection 189(5);

(b) the court by which he is convicted is satisfied that the company or some other person has suffered loss or damage as a result of the contravention that constituted the offence,

that court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or other person of such amount as the court specifies, and the order may be enforced as if it were a judgment of the court.

(2) The power of a court under section 617 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (2) from the liability to have such an order made against him.

Exclusions from operation of subsection 189(1)

191. (1) Subsection 189(1) does not prohibit —

(a) the payment of a dividend by a company in good faith and in the ordinary course of its affairs;

(b) a payment made by a company pursuant to a reduction of capital in accordance with section 170;

(c) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;

(d) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it —

(i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by charge over property of that company; or

(ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;

(e) an acquisition by a company of an interest (other than a legal interest) in fully-paid shares in the company where no consideration is provided by the company, or by a corporation that is related to the company, for the acquisition;

(f) the purchase by a company of shares in the company pursuant to an order of a court;

(g) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for an amount payable to the company in respect of the shares; or

(h) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company that permits the subscriber to make payments for the shares (including payments in respect of a premium) by instalments.

(2) Subsection (1) —

(a) does not imply that a particular act of a company would, but for that subsection, be prohibited by subsection 189(1); or

(b) does not limit the operation of a rule of law that permits the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares.

Further exclusions from operation of subsection 189(1)

192. Subsection 189(1) does not prohibit —

(a) the making of a loan, the giving of a guarantee or the provision of security by a company in the ordinary course of its ordinary business where —

(i) that business includes the lending of money, or the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, that loan, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or

(b) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of fully-paid shares or units of fully-paid shares in the company or in a holding company of the company to be held by or for the benefit of employees of the company or of a corporation that is related to the company, including a director holding a salaried employment or office in the company or in the corporation, as the case may be, where —

(i) neither subparagraph (ii) nor subparagraph (iii) applies - the company has at a general meeting;

(ii) the company is a subsidiary of a listed corporation or listed corporations - the company and the listed corporation or listed corporations have at general meetings; or

(iii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in a State or Territory, including Norfolk Island - the company and the ultimate holding company have at general meetings,

approved a scheme for the provision of money for such acquisitions and the financial assistance is given in accordance with the scheme.

Authorisation by special resolution

193. Subsection 189(1) does not prohibit the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if —

(a) the company, by special resolution, resolves to give financial assistance for the purpose of, or in connection with, that acquisition;

(b) where —

(i) the company is a subsidiary of a listed corporation; or

(ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or in Norfolk Island,

the listed corporation or the ultimate holding company, as the case may be, has, by special resolution, approved the giving of the financial assistance;

(c) the notice specifying the intention to propose the resolution referred to in paragraph (a) as a special resolution set out —

(i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and

(ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations,

and was accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or the persons included in a class of those creditors or members;

(d) the notice specifying the intention to propose the resolution referred to in paragraph (b) as a special resolution was accompanied by a copy of the notice and by a copy of the statement referred to in paragraph (c);

(e) not later than the day next following the day when the notice referred to in paragraph (c) was dispatched to members of the company there was lodged with the Registrar a copy of that notice and a copy of the statement that accompanied that notice;

(f) the notice referred to in paragraph (c) and a copy of the statement referred to in that paragraph were given to —

(i) all members of the company;

(ii) all trustees for debenture holders of the company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the company - all debenture holders, or all debenture holders included in that class, as the case may be, of the company whose names were, at the time when the notice was dispatched, known to the company;

(g) the notice referred to in paragraph (d) and the accompanying documents were given to —

(i) all members of the listed corporation or of the ultimate holding company;

(ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company - all debenture holders or debenture holders included in that class, as the case may be, of the listed corporation or of the ultimate holding company whose names were, at the time when the notice was dispatched, known to the listed corporation or the ultimate holding company;

(h) within 21 days after the general meeting of the company at which the resolution referred to in paragraph (a) was passed or, in a case to which paragraph (b) applies, the general meeting of the listed corporation or ultimate holding company at which the resolution referred to in that paragraph was passed, whichever is the later, a notice —

(i) setting out the terms of the resolution referred to in paragraph (a); and

(ii) stating that any of the persons referred to in section 195 may, within the period referred to in that subsection, make an application to the Court opposing the giving of the financial assistance,

was published as the Registrar directs;

(i) no application opposing the giving of the financial assistance was made within the period referred to in section 195 or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance; and

(j) the financial assistance is given in accordance with the terms of the resolution referred to in paragraph (a) and not earlier than —

(i) in a case to which subparagraph (ii) or (iii) does not apply - the expiration of the period referred to in section 195;

(ii) if an application or applications has or have been made to the Court within that period and the application or each of the applications has been withdrawn - the withdrawal of the application or of the last of the applications to be withdrawn; or

(iii) the application or each of the applications has not been withdrawn - the decision of the Court on the application or applications.

Substantial compliance

194. Where, on application to the Court by a company, the Court is satisfied that the provisions of section 193 have been substantially complied with in relation to a proposal by the company to give financial assistance of a kind mentioned in that section, the Court may, by order, declare that the provisions of that section have been complied with in relation to the proposal.

Application to Court opposing assistance

195. (1) Where a special resolution referred to in paragraph 193(a) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice referred to in paragraph 193(h), by —

(a) a member of the company;

(b) a trustee for debenture holders of the company;

(c) a debenture holder of the company;

(d) a creditor of the company;

(e) if the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries —

(i) a member of that subsidiary or of any of those subsidiaries;

(ii) a trustee for debenture holders of that subsidiary or of any of those subsidiaries;

(iii) a debenture holder of that subsidiary or of any of those subsidiaries; or

(iv) a creditor of that subsidiary or of any of those subsidiaries;

(f) if paragraph 193(b) applies —

(i) a member of the listed corporation or ultimate holding company that passed a special resolution referred to in that paragraph;

(ii) a trustee for debenture holders of that listed corporation or ultimate holding company;

(iii) a debenture holder of that listed corporation or ultimate holding company; or

(iv) a creditor of that listed corporation or ultimate holding company; or

(g) the Registrar.

(2) The Court —

(a) shall, in determining what order or orders to make in relation to an application or applications under subsection (1), have regard to the rights and interests of the members of the company or of the members included in a class of members as well as to the rights and interests of the creditors of the company or of the creditors included in a class of creditors; and

(b) shall not make an order approving the giving of the financial assistance unless the Court is satisfied that —

(i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance; and

(ii) the proposed financial assistance would not, after taking into account the financial position of the company (including any future or contingent liabilities) be likely to prejudice materially the interests of the creditors or members of the company or of the persons included in a class of those creditors or members,

and may do all or any of the following:

(c) make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;

(d) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by a subsidiary of the company) of the interests of dissentient members;

(e) give ancillary or consequential directions and make ancillary or consequential orders;

(f) make an order disapproving the giving of the financial assistance or, subject to paragraph (b), an order approving the giving of the financial assistance.

(3) Where the Court makes an order under this section, the company shall, within 14 days after the order is made, lodge with the Registrar an office copy of the order.

Directors' duties not affected

196. The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company or in the holding company of the company, and the approval by the Court of the giving of the financial assistance, does not relieve a director of the company of a duty to the company under this Act or otherwise, whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

Existing contracts

197. If the doing of an act or thing pursuant to a contract entered into before the commencement of this Act would have been lawful if this Act had not been enacted, this Division does not apply in relation to the doing of that act or thing.

Consequences of company financing dealings in its shares, etc

198. (1) Except as provided by this section —

(a) the validity of a contract or transaction is not affected by a contravention of paragraph 189(1)(a);

(b) the validity of a contract or transaction is not affected by a contravention of paragraph 189(1)(b) unless the contract or transaction affects the acquisition that constitutes the contravention; and

(c) the validity of a contract or transaction is not affected by a contravention of paragraph 189(1)(c) unless the contract or transaction affects the loan the making of which constitutes the contravention.

(2) Where a company makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid by reason that —

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 189; or

(b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section,

the first-mentioned contract or transaction is, subject to the following provisions of this section, voidable at the option of the company by notice in writing given to the other party, or by notices in writing given to each of the other parties, to that contract or transaction.

(3) The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorise the member, holder of debentures, trustee or director to give a notice or notices under subsection (2) in the name of the company.

(4) Where —

(a) a company makes or performs a contract or engages in a transaction;

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 189 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and

(c) the Court is satisfied, on the application of the company or of some other person, that the company or that other person has suffered, or is likely to suffer, loss or damage as a result of —

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void by reason of section 189 or having become void, or becoming void, under this section; or

(iv) a related contract or transaction being void by reason of section 189 or having become void, or becoming void, under this section,

the Court may make such order or orders as are just (including all or any of the orders mentioned in subsection (5) against a party to the contract or transaction or to the related contract or transaction, or against the company or against a person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under subsection (4) include —

(a) an order directing a person to refund money or return property to the company or to some other person;

(b) an order directing a person to pay to the company or to some other person a specified amount not exceeding the amount of the loss or damage suffered by the company or person; and

(c) an order directing a person to indemnify the company or some other person against loss or damage that the company or person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

Certificates of compliance

199. If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of paragraphs 193(1)(a) to (i), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company is given to a person —

(a) that person is not under any liability to have an order made against him under subsection 198(4) by reason of a contract made or performed, or a transaction engaged in, by him in reliance on the certificate; and

(b) such a contract or transaction is not valid, and is not voidable under subsection 198(2), by reason that the contract was made or performed, or the transaction was engaged in, in contravention of this Division or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of this Division.

Persons with knowledge

200. (1) If the Court, on application by the company concerned or by some other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that a person to whom a certificate was given under section 199 became aware before the contract was made or the transaction was engaged in that the requirements of section 193 had not been complied with in relation to the financial assistance to which the certificate related, then that section does not apply in relation to the person.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be deemed to have been aware at a particular time of a matter of which a servant or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transactions was aware at the time.

Effect of certificates

201. In a proceeding —

(a) a document purporting to be a certificate given under section 199 shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given; and

(b) a person who has possession of a certificate given under section 199 shall, in the absence of proof to the contrary, be deemed to be the person to whom the certificate was given.

Offence in relation to certificates

202. (1) If a person signs a certificate stating that the requirements of section 193 have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that at the time when he signed the certificate he believed on reasonable grounds that all the requirements of section 193 had been complied with in respect of the proposed giving of financial assistance to which the certificate related.

Power to grant relief

203. The power of a court under section 617 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection 198(4) from the liability to have such an order made against him.

Certain contracts, etc to be deemed to be related

204. If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in paragraph 189(1)(a) or lends money as mentioned in paragraph 189(1)(c), a contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money shall be deemed for the purposes of this Division to be related to the first-mentioned contract or transaction.

Effect on other rights and liabilities

205. (1) Any rights or liabilities of a person under a section to which this subsection applies (including rights or liabilities under an order made by the Court under such a section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under a section to which this subsection applies or under an order made by the Court under such a section and the rights and liabilities of that person apart from this subsection, the provisions of this subsection or of the order made by the Court prevail.

(2) The sections to which subsection (1) applies are sections 199 to 204 (inclusive).

PART 8 — NOTIFICATION OF SHAREHOLDINGS IN COMPANIES

Transfers to be notified

206 (1) Where a company registers a transfer of shares in the company, the company shall lodge with the Registrar a statement giving particulars of the transfer, including —

(a) the names and addresses of the transferor and of the transferee;

(b) the number and class of shares transferred; and

(c) the date of registration of the transfer.

(2) The statement shall be lodged within 28 days after the date on which the transfer was registered.

(3) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(4) In this section, "transfer" includes an instrument of transmission and "transferor" and "transferee" have corresponding meanings.

Notification of interests in shares

207. (1) A person who is a shareholder in a company shall give to the company a notice that states —

(a) his name and address;

(b) the prescribed particulars of the shares in the company in which the person or an associate of the person has a relevant interest or relevant interests, including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder;

(c) the prescribed particulars of each such interest; and

(d) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person or the associate acquired that interest or has that interest.

(2) The person shall furnish the prescribed documents to the company with the notice.

(3) A person required to give a notice under subsection (1) shall give the notice within 7 business days after that person becomes a shareholder in the company.

(4) The notice shall be so given notwithstanding that the person has ceased to be a shareholder before the expiration of the period referred to in subsection (3).

Notification of change in interests

208. (1) Where there is a change (not being a prescribed change) in the relevant interest or relevant interests of a shareholder in a company, or in the relevant interest or relevant interests of a person who is associated with a shareholder in a company, in shares in the company, the shareholder shall give to the company a notice that states —

(a) his name;

(b) whether the change is a change in a relevant interest of a person who is associated with the shareholder, and if so, the name of the person;

(c) the date of the change and the prescribed particulars of the change; and

(d) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the change has occurred.

(2) The person shall furnish the prescribed documents to the company with the notice.

(3) A person required to give a notice under subsection (1) shall give the notice within 7 business days after that person becomes aware of the change.

(4) For the purposes of subsection (1), where a person acquires or disposes of shares in a company, there shall be deemed to be a change in the relevant interest or relevant interests of the person in shares in that company.

Notification by person who ceases to be shareholder

209. (1) A person who ceases to be a shareholder in a company shall give to the company a notice that states —

(a) his name;

(b) the date on which he ceased to be a shareholder; and

(c) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person ceased to be a shareholder.

(2) The person shall furnish the prescribed documents to the company with the notice.

(3) A person required to give a notice under subsection (1) shall give the notice within 7 business days after he ceases to be a shareholder in the company.

References to operation of section 27

210. The circumstances required to be stated in a notice under this Part include circumstances by reason of which, having regard to the provisions of section 27 —

(a) a person has a relevant interest in shares;

(b) a change has occurred in a relevant interest in shares; or

(c) a person has ceased to be a shareholder in a company.

Registrar may extend period for giving notice

211. (1) The Registrar may, on the application of a person who is required to give a notice under this Part, in his discretion, extend, or further extend, the period for giving the notice.

(2) An application for an extension under subsection (1) may be made, and the power of the Registrar under that subsection may be exercised, notwithstanding that the period concerned has expired.

Company not to be taken to have notice

212. A company is not, by reason of anything done under this Part —

(a) to be taken for any purpose to have notice of; or

(b) put upon inquiry as to,

a right of a person to or in relation to a share in the company.

Offences

213. A person who fails to comply with section 207, 208 or 209 is guilty of an offence.

Penalty: 110 penalty units or imprisonment or both.

Powers of Court with respect to defaulting shareholders

214. (1) Where a person (in this section referred to as "the shareholder") is, or at some time after the commencement of this Act has been, a shareholder in a company and has failed to comply with a provision of this Part, the Court may, on the application of the Registrar or of the company, whether or not that failure still continues, make such orders as are just, including one or more of the following orders:

(a) an order restraining the shareholder, or a person who is associated with the shareholder, from disposing of, or of an interest in, shares in the company, being shares to which the shareholder is entitled;

(b) an order restraining a person who is, or is entitled to be registered as, the holder of shares in the company to which the shareholder is or has been entitled from disposing of, or of an interest in, those shares;

(c) an order restraining the exercise of voting or other rights attached to shares in the company to which the shareholder is or has been entitled;

(d) an order vesting in the Registrar shares in the company to which the shareholder is or has been entitled or an interest in any such shares;

(e) an order directing the company not to make payment, or to defer making payment, of any sum or sums due from the company in respect of shares to which the shareholder is or has been entitled;

(f) an order directing the disposal of, or of an interest in, shares in the company to which the shareholder is or has been entitled;

(g) an order directing the company not to register the transfer or transmission of specified shares;

(h) an order that an exercise of the voting or other rights attached to specified shares in the company to which the shareholder is or has been entitled be disregarded;

(j) for the purposes of securing compliance with some other order made under this section, an order directing the company or some other person to do or refrain from doing a specified act.

(2) Where, at the hearing of an application under this section, the Court is satisfied that —

(a) a person is entitled to shares in a company by reason that another person who is an associated with the first-mentioned person has a relevant interest in those shares; and

(b) that other person became entitled to that relevant interest within the period of 6 months immediately before the filing of the application with the Court,

then, in determining for the purposes of the application whether the first-mentioned person failed to comply with a provision of this Part, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) of this subsection constitutes evidence that the other person was, for the purposes of section 208, associated with the first-mentioned person from the time when that other person became entitled to that relevant interest until the date of the hearing.

(3) An order under this section may include such ancillary or consequential provisions as the Court thinks just.

(4) An order under this section directing the disposal of, or of an interest in, a share may provide that the disposal shall be made within such time and subject to such conditions as the Court orders, including, if the Court thinks fit, a condition that the disposal shall not be made to a person who is, or, as a result of the disposal, would become, a shareholder in the company.

(5) The Court may direct that, where a share or interest in a share is not disposed of in accordance with an order of the Court under this section, the share or interest shall vest in the Registrar.

(6) The Court shall not make an order under subsection (1) unless it is satisfied that the order would not unfairly prejudice any person.

(7) The Court shall not make an order under this section, other than an order referred to in paragraph (1)(c) or (g), if it is satisfied —

(a) that the failure of the shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that, in the circumstances, the failure ought to be excused.

(8) The Court may, before making an order under this section, direct that notice of the application be given to such persons as the Court specifies or direct that notice of the application be published in such manner as the Court specifies, or both.

(9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(10) A person who contravenes or fails to comply with an order under this section that is applicable to him is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(11) Where an offence under subsection (10) is committed by a corporation, each officer of the corporation who is in default is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(12) Where a share or an interest in a share vests in the Registrar by virtue of an order under subsection (1) or of a direction under subsection (5) —

(a) the Registrar may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as he sees fit;

(b) the provisions of section 564 (other than subsection 564(1)) apply in relation to the share or interest as if —

(i) a reference in those provisions to the power of the Administration under subsection 564(1), or to the power conferred upon the Administration by subsection 564(1), were a reference to the power conferred on the Registrar by paragraph (a) of this subsection;

(ii) a reference in those provisions to property, or to an estate or interest in property, were a reference to the share or interest; and

(iii) the reference in subsection 564(4) to a power conferred on the Administration by Subdivision F of Division 4 of Part 22 included a reference to the power conferred on the Registrar by paragraph (a) of this subsection; and

(c) sections 565 and 566 apply in relation to the share or interest in like manner as they apply in relation to property vested in the Registrar.

PART 9 — DEBENTURES

Definition

215. In this Part —

"debenture" means a debenture, debenture stock, bonds, notes and any other security given by a corporation, whether constituting a charge on property of the corporation or not, but does not include —

(a) an order for the payment of money;

(b) a bill of exchange or a cheque: or

(c) a promissory note that has a face value of not less than $150,000;

"guarantor corporation", in relation to a borrowing company, means —

(a) a guarantor corporation that is not a subsidiary of that borrowing corporation; and

(b) a guarantor corporation the directors of which have been given notice under section 231 by the trustee for debenture holders of the borrowing corporation of which the guarantor corporation is a subsidiary.

Register of debenture holders and copies of trust deed

216. (1) A company that issues debentures shall keep a register of holders of debentures.

(2) A company that is registered as a foreign company under Part 25 shall, if it issues debentures, keep a register of holders of debentures that have been —

(a) issued pursuant to an application in which an address in Norfolk Island was specified as the address of the applicant for debentures; or

(b) issued pursuant to an application made on a form of application attached to a prospectus a copy of which was registered under this Act.

(3) A register kept by a company (including a foreign company) pursuant to this section shall contain particulars of the names and addresses of debenture holders and the respective amounts of debentures held by them.

(4) A register kept by a company (including a foreign company) pursuant to this section shall be open for inspection —

(a) by the registered holder of a debenture of the company or by a member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(5) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles, in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate 30 days in a calendar year) as are specified in those provisions.

(6) A registered holder of debentures of, or a holder of shares in, a company (including a foreign company) may request the company or foreign company to furnish him with a copy of its register of the holders of debentures kept pursuant to this section or a part of that register.

(7) A registered holder of debentures of a company (including a foreign company) may request the company to furnish him with a copy of any trust deed relating to or securing the issue of those debentures.

(8) A person may request a company (including a foreign company) to furnish him with a copy of the register or of a part of the register and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar allows; or

(b) in any other case, within 21 days after the request was made or within such longer period as the Registrar allows.

(9) The Registrar may at any time, by notice in writing require a company (including a foreign company) to furnish to the Registrar a copy of any trust deed relating to the issue or securing the issue of debentures of the company and, in that case, the company shall furnish the copy within 21 days after the day on which it receives the notice.

(10) If default is made in complying with this section, the company concerned and any officer of the company who is in default are each guilty of an offence.

Branch registers

217. (1) A company incorporated in Norfolk Island may cause to be kept in a place outside Norfolk Island a branch register of holders of debentures.

(2) A branch register so kept shall be deemed to be part of the register of holders of debentures kept by the company.

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

(4) A company shall transmit to the place at which its principal register is kept a copy of each entry in its branch register within 28 days after the entry is made, and shall cause to be kept at that place, duly entered up from time to time, a duplicate of its branch register, and the duplicate branch register shall, for the purposes of this Act, be deemed to be part of the principal register.

(5) Subject to the provisions of this section with respect to the duplicate branch register, the debentures registered in a branch register shall be distinguished from the debenture registered in the principal register and a transaction with respect to debentures registered in a branch register shall not, during the continuance of that registration, be registered in any other register.

(6) A company may discontinue a branch register and thereupon the company shall transfer all entries in that register to some other branch register kept by the company or to the principal register.

(7) A branch register is evidence of matters that are by this section directed or authorised to be inserted in that register.

(8) If default is made in complying with this section, the company or any officer of the company who is in default, and any person who has arranged with the company to make up a branch register on behalf of the company and is in default, are each guilty of an offence.

(9) In this section —

"branch register", in relation to a company, means a branch register of holders of debentures issued by the company that is kept pursuant to this section;

"principal register", in relation to a company, means the register of holders of debentures issued by the company that is kept pursuant to section 216.

Specific performance of contracts

218 A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

Perpetual debentures

219. (1) A condition contained in a debenture or in a deed for securing debentures, whether the debenture or deed is issued or made before or after the commencement of this Act, is not invalid by reason only that the debenture, by the condition, is made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long.

(2) Subsection (1) has effect notwithstanding any rule or principle of law or of equity to the contrary.

Re-issue of redeemed debentures

220. (1) Where a company has redeemed debentures, whether before or after the commencement of this Act —

(a) unless a provision to the contrary, whether express or implied, is contained in the articles or in a 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, the company has, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) The re-issue of a debenture or the issue of one debenture in place of another under subsection (1), whether the re-issue or issue was made before or after the commencement of this Act, shall not be taken to be 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.

(3) After the re-issue of debentures, the person entitled to the debentures has, and shall be deemed always to have had, the same priorities as if the debentures had not been redeemed.

(4) Where a company has, whether before or after the commencement of this Act, deposited any of its debentures to secure advances on current account 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 debit while the debentures remained so deposited.

Qualifications of trustee for debenture holders

221. (1) Subject to this section, a company that —

(a) invites the public to subscribe for or purchase debentures or offers debentures to the public for subscription or purchase; or

(b) offers debentures as consideration for the acquisition of shares in a company,

shall make provision in a trust deed relating to those debentures for the appointment as a trustee for the holders of those debentures of a corporation (in this section referred to as a "trustee corporation"), being —

(c) a person constituted as the Public Trustee in a State or in a Territory other than Norfolk Island;

(d) a corporation authorised by a law of a State or of a Territory other than Norfolk Island to take in its own name a grant of probate of the will, or of letters of administration of the estate, of a deceased person;

(e) a corporation registered under the *Life Insurance Act 1945* of the Commonwealth;

(f) a banking corporation;

(g) a corporation (in this paragraph referred to as "the subsidiary") the whole of the issued shares of which are held beneficially by a corporation or corporations of a kind referred to in paragraph (d), (e) or (f) (in this paragraph referred to as "the holding company") if —

(i) the holding company is liable for all liabilities incurred or to be incurred by the subsidiary as trustee for the holders of the debentures; or

(ii) the holding company has subscribed for and beneficially holds shares in the subsidiary, being shares in respect of which there is a liability of not less than $500,000 that has not been called up and that, by reason of a special resolution of the members of the subsidiary, is not capable of being called up except in the event, and for the purposes, of the winding up of the subsidiary; or

(h) a corporation approved by the Registrar for the purposes of this subsection.

(2) The approval of a corporation by the Registrar pursuant to paragraph (1)(h) —

(a) may be given generally or in relation to a particular borrowing corporation, a particular class of borrowing corporations or a particular trust deed;

(b) may be given subject to such terms and conditions as the Registrar specifies; and

(c) may be varied or revoked by the Registrar.

(3) Where the approval of a corporation has been revoked under subsection (2), the borrowing company shall appoint a trustee corporation qualified pursuant to this section in place of the trustee corporation that by reason of the revocation has ceased to be qualified.

(4) Where a borrowing company is required by subsection (1) to make provision in a trust deed for the appointment of a trustee corporation as trustee for the holders of debentures, the borrowing company shall not issue any of those debentures until the trustee corporation has consented to act as trustee and the appointment has been made.

(5) Except by leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing company if that trustee corporation is —

(a) a director of the borrowing company;

(b) a shareholder that beneficially holds shares in the borrowing company;

(c) beneficially entitled to moneys owed to it by the borrowing company;

(d) indebted (otherwise than in its capacity as a trustee) to the borrowing company in an amount exceeding $5,000;

(e) a corporation that has entered into a guarantee in respect of the principal debt secured by the debentures or in respect of interest on that debt; or

(f) a corporation that is related to —

(i) a corporation of a kind referred to in any of the preceding paragraphs; or

(ii) the borrowing company.

(6) Subsection (5) does not prevent a trustee corporation from being appointed, holding office or acting as trustee by reason only that the borrowing company owes to the trustee corporation or to a corporation that is related to the trustee corporation —

(a) moneys that (not taking into account any moneys referred to in paragraphs (b) or (c)) do not —

(i) at the time of the appointment or at any time within a period of 3 months after the debentures were first offered to the public - exceed 10% of the amount of the debentures in respect of which invitations or offers to the public are proposed to be issued or made within that period; and

(ii) at any time after the expiration of that period - exceed 10% of the amount owed by the borrowing company to the holders of the debentures;

(b) moneys that are secured by, and only by —

(i) a first mortgage over land of the borrowing company;

(ii) debentures issued by the borrowing company to the public;

(iii) debentures not issued to the public that are issued pursuant to the same trust deed as that creating other debentures issued at any time by the borrowing company to the public; or

(iv) debentures to which the trustee corporation, or a corporation that is related to the trustee corporation, is not beneficially entitled; or

(c) moneys to which the trustee corporation, or a corporation that is related to the trustee corporation, is entitled as trustee for the holder of debentures of the borrowing company in accordance with the terms of the debentures or of the relevant trust deed.

(7) Subsection (5) does not prevent a trustee corporation from being appointed, holding office or acting as a trustee by reason only that the trustee corporation, or a corporation that is related to the trustee corporation, is a shareholder of the borrowing company in respect of shares that it beneficially holds, if the voting shares in the borrowing company beneficially held by the trustee corporation, and by all other corporations that are related to it, do not exceed 10% of the voting shares in the borrowing company.

(8) The reference in subsection (1) to a company that offers debentures as consideration for the acquisition of shares in a company includes a reference to a company that offers a cash sum as consideration for the acquisition of shares where it is to be a term of the contract for the acquisition of those shares that the offeree make, or that the sum be applied in whole or in part in making, a payment by way of deposit with, or loan to, the company.

(9) If default is made in complying with any provision of this section, the borrowing company and any officer of the borrowing company who is in default are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(10) Notice of an approval, variation of an approval or revocation of an approval under this section shall be published in the Gazette.

Retirement of trustees

222. (1) Notwithstanding anything contained in any law in force in Norfolk Island or in the relevant debentures or trust deed, a trustee for the holders of debentures does not cease to be the trustee until a corporation qualified as mentioned in section 221 for appointment as trustee for the holders of the debentures has been appointed for the holders of the debentures and has taken office as trustee.

(2) Where provision has been made in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may, subject to section 221, be appointed in accordance with that provision.

(3) Where no provision has been made in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing company may appoint a successor qualified for appointment as mentioned in section 221.

(4) Notwithstanding anything in this Act or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee a corporation that is qualified for appointment as mentioned in section 221 and is related to the existing trustee.

(5) Where —

(a) the trustee for the holders of debentures has ceased to exist or to be qualified under section 221; and

(b) a trustee for the holders of the debentures has not been appointed pursuant to subsection 221(3) or the trustee for the holders of debentures fails or refuses to act or is disqualified under section 221,

the Court may, on the application of the borrowing company, the trustee (if any) for the holders of the debentures, the holder of any of the debentures or the Registrar, appoint a corporation qualified as mentioned in section 221 to be the trustee for the holders of the debentures and, where appropriate, to be that trustee in place of the trustee that so ceased to exist or to be qualified, failed or refused to act as trustee or is disqualified.

(6) Where a successor is appointed to be a trustee in place of a trustee, the successor shall, within one month after the appointment, lodge with the Registrar notice of the appointment.

Contents of trust deed

223. (1) Where a company invites the public to subscribe for or purchase debentures or offers debentures to the public for subscription or purchase, the relevant trust deed shall contain a limitation on the amount that the company may borrow pursuant to that deed or those debentures and shall contain covenants by the company or, if the trust deed does not expressly contain those covenants, the trust deed shall be deemed to contain covenants by the company, to the effect —

(a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) that the borrowing company will —

(i) make available for inspection by the trustee for the holders of the debentures or registered company auditor appointed by that trustee the whole of the accounting or other records of the company; and

(ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the company; and

(c) that the company will, on the delivery to its registered office of an application by persons holding not less than 10% in nominal value of the issued debentures to which the covenant relates, by giving notice to each of the holders of the debentures to which the covenant relates (other than debentures payable to bearer) at his address as specified in the register of the holders of debentures, convene a meeting of the holders of those debentures to consider the accounts and balance-sheet that were laid before the last preceding annual general meeting of the company and to give to the trustee directions in relation to the exercise of the trustee's powers, being a meeting to be held at a time and place specified in the notice under the chairmanship of a person nominated by the trustee or, if the trustee does not nominate a person to be the chairman, under the chairmanship of some other person appointed for the purpose by the holders of those debentures at the meeting.

(2) A trust deed to which subsection (1) applies that is executed after the commencement of this Act shall contain covenants by each corporation that is a guarantor corporation in relation to the borrowing company, or, if the trust deed does not, or debentures do not, expressly contain those covenants, the trust deed or debentures shall be deemed to contain covenants by each guarantor corporation, to the effect —

(a) that the guarantor corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner; and

(b) that the guarantor corporation will —

(i) make available for inspection by the trustee for the holders of the debentures or by a registered company auditor appointed by that trustee, the whole of the accounting or other records of the guarantor corporation; and

(ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the guarantor corporation.

(3) For the purposes of subsection (2), each guarantor corporation shall be deemed to be a party to the trust deed.

(4) The reference in subsection (1) to a company that offers debentures as consideration for the acquisition of shares in a company includes a reference to a company that offers a cash sum as consideration for the acquisition of shares where it is to be a term of the contract for the acquisition of those shares that the offeree make, or that the sum be applied in whole or in part in making, a payment by way of deposit with, or loan to, the company.

(5) Where a debenture is issued and the trust deed relating to the issue of the debenture does not expressly contain the limitation on the amount that the borrowing company may borrow and the covenants referred to in subsection (1), the company that issued the debenture and any officer of the corporation who is in default are each guilty of an offence.

(6) Where a debenture is issued after the commencement of this Act and the trust deed relating to the issue of the debenture does not expressly contain the covenants referred to in subsection (2), the company that issued the debenture and any officer of the company who is in default are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(7) Subsection (6) does not apply to a debenture lawfully issued pursuant to a trust deed executed before the commencement of this Act.

Power of Court in relation to certain irredeemable debentures

224. (1) Notwithstanding anything in a debenture or trust deed, where, on the application of the trustee for the holders of debentures that are irredeemable or redeemable only on the happening of a contingency or, if there is no trustee, on the application of the holder of any such debentures, the Court is satisfied that —

(a) at the time of the issue of the debentures, the property of the borrowing company that constituted or was intended to constitute the security for the debentures was sufficient or likely to become sufficient to discharge the principal debt and any interest on that debt;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to any prior charges and charges ranking *pari passu*); and

(c) the property subject to the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation, is worth less than the principal sum and the borrowing company is not making sufficient profit to pay the interest on the principal sum or, where no definite rate of interest is payable, interest on that sum at such rate as the Court considers would be a fair rate to expect from a similar investment,

the Court may order that the security may be enforced forthwith or at such time as the Court orders.

(2) Subsection (1) does not affect a power to vary rights or to accept a compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing company and its creditors.

Duties of trustees

225. **(1)** A trustee for the holders of debentures —

(a) shall exercise reasonable diligence to ascertain whether the property of the borrowing company and of each of its guarantor corporations that is or may be available, whether by way of security or otherwise, is sufficient, or is likely to be or become sufficient, to discharge the principal debt as and when it becomes due;

(b) shall satisfy itself that each prospectus relating to the debentures does not contain matter that is inconsistent with the terms of the debentures or with the relevant trust deed;

(c) shall ensure that the borrowing company and each of its guarantor corporations comply with the provisions of this Act relating to the registration of charges so far as they relate to the debentures and are applicable;

(d) shall exercise reasonable diligence to ascertain whether the borrowing company or any of its guarantor corporations has committed a breach of the covenants, terms and provisions of the debentures or of the trust deed;

(e) except where it is satisfied that the breach will not materially prejudice the security (if any) for the debentures or the interests of the holders of the debentures - shall take all steps and do all such things as it is empowered to do to cause the borrowing company and any of its guarantor corporations to remedy a breach of those covenants, terms and provisions;

(f) where the borrowing company or any of its guarantor corporations fails, when so required by the trustee, to remedy a breach of the covenants, terms and provisions of the debentures or the trust deed - may place the matter of the failure before a meeting of holders of the debentures, submit such proposals for the protection as the trustee considers necessary or appropriate and obtain the directions of the holders in relation to the matter; and

(g) where the borrowing company submits to those holders a compromise or arrangement - shall give to them a statement explaining the effect of the compromise or arrangement and shall, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation to the compromise or arrangement.

(2) Where, after due inquiry, the trustee for the holders of debentures at any time is of the opinion that the property of the borrowing company and of any of its guarantor corporations that is or should be available, whether by way of security or otherwise, is insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Registrar for an order under subsection (3).

(3) The Registrar may, after giving the borrowing company an opportunity of making representations in relation to the application, by order in writing served on the company at its registered office, impose such restrictions on the activities of the company, including restrictions on advertising for deposits or loans and on borrowing by the company, as the Registrar thinks necessary for the protection of the interests of the holders of the debentures.

(4) The Registrar may, and, if the borrowing company so requires, shall, direct the trustee to apply to the Court for an order under subsection (6) and the trustee shall apply accordingly.

(5) Where —

(a) after due inquiry, the trustee at any time is of the opinion that the property of the borrowing company and of any of its guarantor corporations that is or should be available, whether by way of security or otherwise, is insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(b) the borrowing company has contravened or failed to comply with an order made by the Registrar under subsection (3),

the trustee may, and where the borrowing corporation has requested the trustee to do so, the trustee shall, apply to the Court for an order under subsection (6).

(6) Where an application is made to the Court under subsection (4) or (5), the Court may, after giving the borrowing company an opportunity of being heard, by order, do all or any of the following:

(a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate and of obtaining their directions in relation to the protection of their interests and give such directions in relation to the conduct of the meeting as the Court specifies;

(b) stay any action or other civil proceeding before the Court or the Court of Petty Sessions by or against the borrowing company;

(c) restrain the payment of moneys by the borrowing company to the holders of debentures of the company or to the persons included in a class of such holders;

(d) appoint a receiver of property that constitutes security for the debentures;

(e) give such further directions from time to time as are appropriate or necessary to protect the interests of the holders of the debentures, of the members of the borrowing company or of any of its guarantor corporations or the public.

(7) In making such an order the Court shall have regard to the rights of all creditors of the borrowing company.

(8) The Court may vary or rescind any order made under subsection (6).

(9) In making an application to the Registrar or to the Court, a trustee shall have regard to the nature and kind of any security given when the debentures were offered to the public and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing company.

Power of trustees to apply to the Court for directions, etc

226. (1) The trustee for the holders of debentures may apply to the Court -

(a) for direction in relation to a matter arising in connection with the performance of the functions of the trustee; or

(b) to determine a question in relation to the interests of the holders of the debentures.

(2) On the application, the Court may —

(a) give such directions to the trustee as the Court thinks just; and

(b) if satisfied that the determination of the question will be beneficial - accede wholly or partially to the application on such terms and conditions as the Court thinks just or make such other order on the application as the Court thinks just.

(3) The Court may order a meeting of all or any of the holders of the debentures to be convened to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as are just.

(4) The meeting shall be held and conducted in such manner as the Court directs, under the chairmanship of a person nominated by the trustee or, if the trustee does not nominate a person to be the chairman, under the chairmanship of such other person as is appointed for that purpose by the holders of debentures present at the meeting.

Obligations of borrowing company

227. (1) Where there is a trustee for the holders of debentures of a borrowing company, the trustee shall, by notice in writing to the borrowing company, specify for the purposes of this section a day, being not later than 6 months after the date of the relevant prospectus.

(2) The directors of the borrowing company shall —

(a) at the end of a period not exceeding 3 months ending on the day so specified; and

(b) at the end of each succeeding period, being a period of 3 months or such shorter period as the trustee, in special circumstances, allows,

prepare a report that relates to that period and complies with the requirements of subsections (3) and (4), within one month after the end of each such period, lodge the report relating to that period with the trustee and a copy of the report with the Registrar.

(3) The report referred to in subsection (1) shall be signed by not less than 2 of the directors on behalf of all of them and shall set out all matters that adversely affect the security or the interests of the holders of the debentures.

(4) The report shall include a statement as to each of the following:

(a) whether the limitations on the amount that the company may borrow have been exceeded and, if so, particulars of borrowings exceeding those limitations;

(b) whether the company and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or a trust deed;

(c) whether an event has happened that has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;

(d) whether circumstances affecting the company, its subsidiaries or its guarantor corporations or any of them have occurred that materially affect a security or charge included in or created by the debentures or a trust deed and, if so, particulars of those circumstances;

(e) whether there has been a substantial change in the nature of the business of the company, of any of its subsidiaries or of any of its guarantor corporations since the debentures were first issued to the public that has not previously been reported upon as required by this section and, if so, particulars of that change; and

(f) where the company has deposited money with, lent money to, or assumed a liability of, a corporation that is related to the company, particulars, with respect to each corporation that is so related, of —

(i) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and

(ii) the total amounts owing to the company in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report.

(5) Particulars as mentioned in paragraph (4)(f) shall distinguish between deposits, loans and assumptions of liability that are secured and those that are unsecured, but not including a deposit with, loan to, or liability assumed on behalf of, a corporation if that corporation has guaranteed the repayment of the debentures of the company and has secured the guarantee by a charge over its property in favour of the trustee for the holders of the debentures of the company.

(6) Where, during the period to which a report referred to in subsection (1) relates —

(a) a corporation has become a guarantor corporation;

(b) a guarantor corporation has ceased to be liable for the payment of the whole or part of the moneys for which it was liable under the guarantee; or

(c) a guarantor corporation has changed its name,

the report shall so state and shall give particulars of the matter so stated.

Further charges

228. Where there is a trustee for the holders of debentures issued by a borrowing company and the company or any of its guarantor corporations that has guaranteed the repayment of the moneys raised by the issue of those debentures creates a charge, the company or the guarantor corporation, as the case requires, shall, whether or not a demand for the particulars has been made —

(a) furnish in writing to the trustee, within 21 days after the creation of the charge, particulars of the charge; and

(b) if the total amount to be advanced on the security of the charge is indeterminate —

(i) furnish in writing to the trustee, within 7 days after an advance is made, particulars of the amount of the advance; or

(ii) where the advances are merged in a current account with bankers or trade creditors - furnish in writing to the trustee, at the end of every 3 months, particulars of the net amount outstanding in respect of the advances.

Profit and loss accounts

229. The directors of a borrowing company that has issued debentures (other than debentures of a kind that could be lawfully described pursuant to section 127 as mortgage debentures or certificates of mortgage debenture stock) and of each relevant guarantor corporation that has guaranteed the repayment of the moneys raised by the issue of those debentures shall —

(a) at a date —

(i) not later than 6 months; or,

(ii) in the case of a particular company, not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee for the debenture holders,

after the expiration of each financial year of the company, cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures a profit and loss account for that financial year and a balance-sheet as at the end of that financial year; and

(b) at a date —

(i) not later than 10 months; or

(ii) in the case of a particular company, not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee for the debenture holders,

after the expiration of each financial year of the company, cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures a profit and loss account for the period from the end of that financial year until the expiration of 6 months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.

Consolidated accounts

230. The directors of a borrowing company that is a holding company shall —

(a) at a date —

(i) not later than 6 months; or

(ii) in the case of a particular company, not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee for the debenture holders,

after the expiration of each financial year of the company, cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the company and each guarantor corporation that is a subsidiary of the company for that financial year; and

(b) at a date —

(i) not later than 10 months; or

(ii) in the case of a particular company, not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee for the debenture holders of that company,

after the expiration of each financial year of the company, cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the company and each guarantor corporation that is a subsidiary of the company for the period from the end of that financial year until the expiration of 6 months after the end of that financial year.

Notice to comply

231. (1) A trustee for debenture holders of a borrowing company may give to the directors of a guarantor corporation that is a subsidiary of the company a notice requiring them to comply with the requirements of section 229.

(2) Where a notice is so given —

(a) the directors of the guarantor corporation shall comply with the requirements of section 229 in relation to the next financial year of that corporation that ends after the notice was so given and in relation to each subsequent financial year of that corporation; and

(b) where the notice is given within the period of 6 months after the end of a financial year of the corporation - the directors of the corporation shall comply with the requirements of paragraph 229(b) in relation to the period commencing at the end of that financial year and ending at the expiration of that period of 6 months.

(3) A trustee for debenture holders shall, within 7 days after he gives a notice under subsection (1), lodge a copy of the notice with the Registrar.

Application of certain sections

232. **(1)** Sections 227 to 231 (inclusive) do not apply in respect of a borrowing company or a guarantor corporation if —

(a) the company or the guarantor corporation is being wound up; or

(b) a receiver or a manager of property of the company or of the guarantor corporation has been appointed and has not ceased to act under the appointment.

(2) The provisions of section 340 (other than subsection (9)), subsections 341(1), (2) and (3), section 343 and section 357 (other than subsection (9)) are, with such adaptations as are necessary, applicable to a profit and loss account and balance-sheet made out and lodged pursuant to section 229 by the directors of a borrowing company as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections or subsections.

(3) Notwithstanding anything in the preceding provisions of this section, the directors of a borrowing company are not required to comply, in relation to profit and loss accounts and balance-sheets required to be made out and lodged under section 229, with subsection 340(3) or 341(2) or with section 357 (as it relates to group accounts) if the trustee for the debenture holders consents in writing to the directors being exempt from those requirements.

(4) The provisions of section 340 (other than subsection (9)), subsections 341(1), (2) and (3), section 343, and section 357 (other than subsection (9)) are, with such adaptations as are necessary, applicable to a profit and loss account and balance-sheet made out and lodged pursuant to section 230 by the directors of the borrowing company as if —

(a) that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections or subsections; and

(b) references in those sections and subsections to group accounts were references to the consolidated accounts referred to in section 230.

(5) The provisions of section 340 (other than subsection (3)), subsections 341(1) and (3), section 343 and section 357 (other than the provisions of that section relating to group accounts) are, with such adaptation as are necessary, applicable to a profit and loss account and balance-sheet made out and lodged pursuant to section 229 by the directors of a guarantor corporation as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections or subsections.

Registrar to be notified of failure to lodge accounts

233. Where the directors of a borrowing company do not, within the required time, lodge with the trustee for the holders of debentures a report as required by this Part or where the directors of a borrowing company or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by this Part, the trustee shall forthwith lodge notice of that fact with the Registrar.

Audit may be dispensed with or limited

234. (1) Notwithstanding anything contained in this Part, the audit of a profit and loss account and balance-sheet of a borrowing company or of its guarantor corporation relating to a period of 6 months immediately following a financial year required to be made out and lodged in accordance with this Part may be dispensed with or may be of a limited nature or extent if the trustee for the holders of the debentures of the borrowing company has consented in writing to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(2) Where the trustee has so consented, the directors of the borrowing company or guarantor corporation shall lodge with the Registrar a copy of the instrument of consent at the time when the profit and loss account and balance-sheet are so lodged.

(3) Where the trustee for debenture holders of a borrowing company has consented to the directors of the company being exempt from complying with the requirements of the Part relating to profit and loss accounts, the directors shall lodge with the Registrar a copy of the instrument of consent at the time when the profit and loss account and balance-sheet are so lodged.

Value of trading stock

235. Notwithstanding anything contained in this Part, a profit and loss account and balance-sheet of a borrowing company or of its guarantor corporation relating to a period of 6 months immediately following a financial year required to be made out and lodged in accordance with this Part may, unless the trustee for the holders of the debentures of the borrowing company otherwise require in writing, be based upon the value of the trading stock of the borrowing company or of the guarantor corporation, as the case may be, as —

(a) reasonably estimated by the directors of the company or corporation on the basis of the value of the trading stock as adopted for the purpose of the profit and loss account and balance-sheet of the company or corporation laid before the company or corporation at its last preceding annual general meeting; and

(b) certified in writing as such by those directors.

Obligation of guarantor corporation to furnish information

236 (1) For the purpose of the preparation of a report that is required by this Act to be signed by or on behalf of the directors of a borrowing company or any of them, the company may, by notice in writing, require any of its guarantor corporations to furnish it with information relating to that guarantor corporation that is required by this Act to be contained in that report and that guarantor corporation shall furnish the borrowing company with that information before such date, being a date not earlier than 14 days after the notice is given, as is specified for that purpose in the notice.

(2) If a corporation fails to comply with a requirement contained in a notice given pursuant to subsection (1), that corporation and any officer of that corporation who is in default are each guilty of an offence.

Loans to be immediately repayable in certain events

237. (1) Where, in a prospectus issued in connection with an invitation to the public to subscribe for or to purchase, or in connection with an offer to the public for subscription or purchase of, debentures of a company, there is a statement as to a particular purpose or project for which the moneys received by the company in response to the invitation or offer are to be applied, the company shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving that purpose or completing that project.

(2) Such a report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection 227(1).

(3) Where it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where such a time was not stated, within a reasonable time, the trustee may, and, if in his opinion it is necessary for the protection of the interest of the holders of the debentures, shall, give notice in writing to the company requiring it to repay the moneys so received by the company.

(4) The trustee shall, within one month after such a notice is given, lodge with the Registrar a copy of the notice.

(5) The trustee shall not give a notice pursuant to subsection (3) if it is satisfied —

(a) that the purpose or project has been substantially achieved or completed;

(b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) that the failure to achieve or complete the purpose or project was due to circumstances beyond the control of the company that could not reasonably have been foreseen by the company at the time when the prospectus was issued.

(6) Upon receipt by the company of a notice referred to in subsection (3), the company is liable to repay any money owing to a person (in this subsection and in subsection (7) referred to as "the relevant person") as the result of a loan or deposit made in response to the invitation or offer, and, on demand in writing by the relevant person, shall immediately repay the money to the relevant person.

(7) Subsection (3) does not apply where —

(a) before the moneys received by the company in response to the invitation or offer were accepted by the company, the company, by notice in writing served on the persons from whom moneys were received —

(i) specified the purpose or project for which the moneys would in fact be applied by the company; and

(ii) offered to repay the moneys to those persons,

and the relevant person had not, within 14 days after the receipt of the notice or within such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to him; or

(b) the company, by notice in writing served on the holders of the debentures —

(i) specified the purpose or project for which the moneys would in fact be applied by the company; and

(ii) offered to repay the moneys to the holders of the debentures,

and the relevant person had not, within 14 days after the receipt of the notice or within such longer time as was specified in the notice, demanded in writing from the company repayment of the money owing to him.

(8) Where the company has given notice as provided by subsection (7) specifying the purpose or project for which the moneys received by the company in response to the invitation or offer will in fact be applied by the company, the provisions of this section apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Invitations or offers by certain corporations

238. (1) Notwithstanding any other provision of this Act, an invitation to the public made by a prescribed corporation to lend money to, or to deposit money with, that corporation or an offer to the public made by a prescribed corporation to accept moneys that are lent to, or deposited with, that corporation shall, for the purposes of this Part, be deemed not to be an invitation to the public to subscribe for or purchase debentures of the corporation or an offer to the public of debentures of the corporation for subscription or purchase.

(2) In this section, "prescribed corporation" has the same meaning as in subsection 130(2).

Liability of trustees for debenture holders

239. (1) Subject to this section, a provision contained in a trust deed relating to or securing an issue of debentures, or in a contract with the holders of debentures secured by a trust deed, is void in so far as it would have the effect of exempting a trustee from, or indemnifying it against, liability for breach of trust where it has not shown the degree of care and diligence required of it as trustee having regard to its powers, authorities or discretions under the trust deed or contract.

(2) Subsection (1) does not —

(a) invalidate a release otherwise validly given in respect of anything done or omitted to be done by a trustee before giving of the release;

(b) invalidate a provision enabling such a release to be given —

(i) on the consent to the giving of the release of a majority of not less than three-quarters in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting convened for the purpose; and

(ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act;

(c) invalidate a provision in force at the commencement of this Act so long as a trustee then entitled to the benefit of that provision remains a trustee of the deed concerned; or

(d) deprive a trustee of an exemption or right to be indemnified in respect of something done or omitted by the trustee to be done by the trustee while such a provision was in force.

PART 10 — TITLE TO AND TRANSFER OF SECURITIES

Nature of shares

240. (1) A share or other interest of a member in a company —

(a) is personal property;

(b) is transferable or transmissible, or may be otherwise dealt with, as provided by law or by the articles; and

(c) subject to the articles, is capable of devolution by will.

(2) Subject to subsection (1) —

(a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a company as they apply to other property; and

(b) equitable interests in respect of a share or other interest of member in a company may be created, dealt with and enforced as in the case of other personal property.

Numbering of shares

241. (1) Each share in a company shall be distinguished by an appropriate number.

(2) If at any time all the issued shares in a company, or all the issued shares in a company included in a particular class, are fully paid up and rank equally for all purposes, none of those shares is required to have a distinguishing number so long as each of then remains fully paid up and ranks equally for all purposes with all shares included in the same class for the time being issued and fully paid up.

(3) If all the issued shares in a company are evidenced by certificates in accordance with section 242, each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares is required to have a distinguishing number.

Certificate to be evidence of title

242. (1) A certificate issued in accordance with subsection (2) specifying shares held by a member of a company is evidence of the title of the member to the shares.

(2) A certificate referred to in subsection (1) shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the common seal or official seal of the company and shall state —

(a) the name of the company and the authority under which the company is constituted;

(b) the class of the shares; and

(c) the nominal value of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section does not affect the rights of a holder of shares.

(4) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Duplicate common seal

243. (1) A company may, if authorised by its articles, have a duplicate common seal, which shall be a facsimile of the common seal of the company with the addition on its face of the words "Share Seal" or "Certificate Seal".

(2) A certificate referring to or relating to securities of a company sealed with such a duplicate seal shall, for the purposes of this Act, be deemed to be sealed with the common seal of the company.

Loss or destruction of certificates

244. (1) Subject to subsection (2), where a certificate or other document of title to securities is lost or destroyed, the company shall, on application by the owner of the securities issue a duplicate certificate or document to the owner —

(a) if the company requires the payment of an amount not exceeding the prescribed amount - within 21 days after the payment is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the application is made or within such longer period as the Registrar allows.

(2) The application shall be accompanied by —

(a) a statement in writing that the certificate or document has been lost or destroyed and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and

(b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

(3) A company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant to do either or both of the following:

(a) cause an advertisement to be inserted in the Gazette stating that the certificate or document has been lost or destroyed and that the owner intends, after the expiration of 14 days after the publication of the advertisement, to apply to the company for a duplicate;

(b) furnish a bond for an amount equal to at least the current market value of the securities concerned indemnifying the company against loss following the production of the original certificate or document.

Instruments of transfer

245. (1) Notwithstanding anything in its articles or in a deed relating to debentures, a company shall not register a transfer of securities unless a proper instrument of transfer has been delivered to the company.

(2) Subsection (1) does not affect the power of the company to register as a shareholder or debenture holder a person to whom the right to the securities concerned has devolved by will or by operation of law.

(3) A transfer of securities of a deceased holder made by his personal representative is, although the personal representative is not himself registered as the holder of those securities, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

(4) Where the personal representative of a deceased holder duly constituted as such under the law of a State or of a Territory other than Norfolk Island —

(a) executes an instrument of transfer of securities of the deceased holder to himself or to some other person; and

(b) delivers the instrument to the company, together with a statement in writing made by him to the effect that, to the best of his knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in Norfolk Island and no application for such a grant will be made, being a statement made within the period of 3 months immediately preceding the date of delivery of the statement to the company,

the company shall register the transfer and pay to the personal representative any dividends or other moneys accrued in respect of the securities up to the time of the execution of the instrument.

(5) Subsection (4) does not require the company to do an act or thing that it would not have been required to do if the personal representative were the personal representative of the deceased holder duly constituted under the law of Norfolk Island.

(6) A transfer or payment made pursuant to subsection (4) and a receipt or acknowledgement of such a payment is, for all purposes, as valid and effectual as if the personal representative were the personal representative of the deceased holder duly constituted under the law of Norfolk Island.

(7) For the purposes of this section, an application by the personal representative of a deceased person for registration as the holder of securities in place of the deceased person shall be deemed to be an instrument of transfer effecting a transfer of the securities to the personal representative.

(8) The production to a company of a document that is, under the law of Norfolk Island or under the law of a State or of a Territory other than Norfolk Island, sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to a person shall be accepted by the company, notwithstanding anything in its articles or in a deed relating to debentures, as sufficient evidence of the grant.

Registration of transfer at request of transferor

246. (1) On the request in writing of the transferor of securities of a company, 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.

(2) On the request in writing of the transferor of securities of a company, the company shall, by notice in writing, require the person having the possession, custody or control of the share certificate or debenture concerned and the instrument of transfer of the share or debenture to bring it into the office of the company within a specified period, being not less than 7 and not more than 28 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.

(3) If a person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to the Court to issue a summons for that person to appear before the Court and to show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) Upon appearance of a person so summoned, the Court may examine him upon oath or affirmation and receive other evidence or, if he does not appear after being duly served with the summons, the Court may receive evidence in his absence.

(5) In either case, the Court may order the person summoned to deliver up such documents to the company upon such terms or conditions as the Court orders.

(6) The costs of the summons and of proceedings on the summons are in the discretion of the Court.

(7) Lists of share certificates or debentures called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised by the company in the Gazette.

Notice of refusal to register transfer

247 (1) If a company refuses to register a transfer of securities of the company, it shall, within one month after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

(2) If a company fails to comply with this section, the company and each officer of the company who is in default are each guilty of an offence.

Remedy for refusal to register transfer or transmission

248. (1) Where a relevant authority in relation to a company refuses or fails to register, or refuses or fails to give consent or approval to the registration of, a transfer or transmission of securities of the company, the transferee or transmittee may apply to the Court for an order under this section.

(2) Where the Court is satisfied that the refusal or failure was without just cause, the Court may —

(a) order that the transfer or transmission be registered; or

(b) make such other order as it thinks just, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the company or by the company and, in the case of a purchase by the company, providing for the reduction accordingly of the capital of the company.

(3) In this section, "relevant authority", in relation to a company, means —

(a) a person who has, 2 or more persons who together have, or a body that has, authority to register a transfer or transmission of securities of the company; or

(b) a person, 2 or more persons, or a body, whose consent or approval is required before a transfer or transmission of securities of the company is registered.

Certification of transfers

249. (1) The certification by a company of an instrument of transfer of securities of the company shall be taken as a representation by the company to a person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show title to the securities in the transferor named in the instrument of transfer but not as a representation that the transferor has a title to the shares or debentures.

(2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.

(3) Where a certification is expressed to be limited to 42 days or to some longer period from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of a transfer of securities to which the certification relates after the expiration of the period so limited or any extension of that period given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.

(4) For the purpose of this section —

(a) a certification shall be deemed to have been made in respect of an instrument of transfer if the instrument bears the words "Certificate lodged" or words to that effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if —

(i) the person issuing the instrument is a person authorised to make certifications of instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person so authorised or by an officer of the company or of a corporation so authorised; and

(c) a certification that purports to be authenticated by a person's signature (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature was not placed there by him and was not placed there by some other person authorised to use the signature for the purpose of making certifications of transfers on the company's behalf.

(5) In subsection (4), "signature" includes initials.

Duties of company with respect to issue of certificates

250. **(1)** Within 2 months after the allotment of shares in or the issue of debentures of a company, the company shall —

(a) complete and have ready for delivery to the allottee or debenture holder (in this subsection referred to as "the relevant person"), all the appropriate certificates, debentures or other documents in connection with the allotment of the shares or the issue of debentures unless, in the case of shares, the conditions of the allotment otherwise provide; and

(b) unless otherwise instructed by the relevant person, send or deliver the completed certificates, debentures or other documents to the relevant person or, where the relevant person has instructed the company in writing to send them to some other person, to that person.

(2) Within one month after the date on which a transfer of securities is lodged with a company (other than a transfer that the company is for some reason entitled to refuse to register and does not register), the company shall —

(a) complete and have ready for delivery to the transferee all the appropriate certificates, debentures or other documents in connection with the transfer; and

(b) unless otherwise instructed by the transferee, send or deliver the completed certificates, debentures or other documents to the transferee or, where the transferee has instructed the company in writing to send them to some other person, to that person.

(3) A company is not required to comply —

(a) with subsection (1) in relation to the allotment of shares in or the issue of debentures of the company; or

(b) with subsection (2) in relation to a transfer of shares or debentures,

if the allottee or debenture holder or the transferee, as the case may be, is a person who has applied to the Registrar for the making of a declaration under this subsection and has been declared by the Registrar, by instrument in writing published in the Gazette, to be a person in relation to whom this section does not apply.

(4) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

(5) If a company on which a notice has been served requiring the company to make good a default in complying with the provisions of this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates, debentures or other documents delivered to him, make an order directing the company and a specified officer of the company to make good the default within such time as the Court specifies.

(6) The order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of the company in default in such proportions as the Court thinks fit.

PART 11 — REGISTRATION OF CHARGES

Interpretation and application of Part

251. (1) In this Part and in Schedule 2, unless the contrary intention appears —

"document of title" means a document —

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or

(b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

and includes —

(c) a bill of lading;

(d) a warehouse keeper's certificate;

(e) a wharfinger's certificate; and

(f) a warrant or order for the delivery of goods;

"present liability", in relation to a charge, means a liability that has arisen and is —

(a) a liability the extent or amount of which is ascertained or ascertainable; or

(b) a liability to pay interest in respect of an amount the payment or repayment of which is a liability of the kind referred to in paragraph (a),

whether or not the liability is immediately due to be met;

"prospective liability", in relation to a charge, means a liability that may arise in the future or any other liability, not being a present liability;

"Register" means the Register of Company Charges referred to in section 255;

"registrable charge" means a charge to and in relation to which, by virtue of section 252, the provisions of this Part mentioned in subsection 252(1) apply.

(2) In this Part and in Schedule 2, unless the contrary intention appears, a reference to property of a company includes a reference to property held by the company as trustee.

(3) A charge referred to in subsection 253(3) or (4) or section 254, shall, until the charge is registered, be treated for the purposes of this Part and Schedule 2 as if it were not a registrable charge but, when the charge is registered, it has the priority accorded to a registered charge as from the time of registration.

(4) The registration of a charge referred to in subsection 253(3) or (4) or section 254 does not affect a priority that would have been accorded to the charge under some other law if the charge had not been registered.

(5) For the purposes of this Part and of Schedule 2, a notice or other document shall be taken to be lodged with the Registrar when it is received at the office of the Registrar by him or by an officer authorised to receive it.

(6) A reference in this Part and Schedule 2 to a company includes a reference to a registered foreign company.

(7) A reference in this Part and in Schedule 2 to a charge on property of a company shall —

(a) in the case of a company other than a foreign company, be construed as a reference to a charge on property of the company, whether within or outside Norfolk Island; and

(b) in the case of a registered foreign company, be construed as a reference to a charge on property of the company within Norfolk Island.

Charges required to be registered

252. (1) Subject to this section, the provisions of this Part relating to the giving of notice in relation to, the registration of, and the priorities of charges apply to and in relation to the following charges (whether legal or equitable) on property of a company and do not apply to or in relation to any other charge:

(a) a floating charge on the whole or a part of the property, business or undertaking of the company;

(b) a charge on uncalled share capital or uncalled share premiums;

(c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;

(d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law in force in Australia or in Norfolk Island relating to title to ships;

(e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;

(f) a charge on a book debt;

(g) a charge on a marketable security, not being —

(i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or

(ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by him;

(h) a lien or charge on a crop or on wool or a stock mortgage, being a lien, charge or mortgage that is registrable under an enactment;

(i) a charge on a negotiable instrument.

(2) The provisions of this Part mentioned in subsection (1) do not apply to or in relation to —

(a) a charge on, or a lien over, property of arising by operation of law;

(b) a pledge of a personal chattel or of a marketable security;

(c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;

(d) a transfer of goods in the ordinary course of the practice of a profession or the carrying on of a trade or business; or

(e) a dealing, in the ordinary course of the practice of a profession or the carrying on of a trade or business, in respect of goods outside Norfolk Island.

(3) The reference in paragraph (1)(d) to a charge on a personal chattel is a reference to a charge on an article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on —

(a) a document evidencing title to land;

(b) a chattel interest in land;

(c) a marketable security;

(d) a document evidencing a chose in action; or

(e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

(4) The reference in paragraph (1)(f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the company at some future time on account of or in connection with a profession, trade or business carried on by the company, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

(5) For the purposes of this section, a company shall be deemed to have deposited a document of title to property with another person (in this subsection referred to as "the chargee") where the document of title is not in the possession of the company if —

(a) the person who holds the document of title acknowledges in writing that he holds the document of title on behalf of the chargee; or

(b) a government, an authority or a corporation that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

(6) For the purposes of this section, a charge shall be taken to be a charge on property of a kind to which a particular paragraph of subsection (1) applies notwithstanding that the instrument of charge also charges other property of the company, including other property that is of a kind to which none of the paragraphs of that subsection applies.

(7) The provisions of this Part mentioned in subsection (1) do not apply to or in relation to —

(a) a charge on land or to or in relation to a charge on fixtures given by a charge on the land to which they are affixed; or

(b) a charge created by a company in its capacity as legal personal representative of a deceased person or as trustee of the estate of a deceased person.

(8) A charge on property of a company is not invalid by reason only of the failure to lodge with the Registrar or give to the company or to some other person a notice or other document that is required by this Part to be so lodged or given.

Lodgment of notice of charge and copy of instrument

253. (1) Where a company creates a charge, the company shall ensure that the following are lodged with the Registrar within 45 days after the creation of the charge:

(a) a notice setting out the following particulars:

(i) the name of the company and the date of the creation of the charge;

(ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;

(iii) if the charge is a floating charge - whether there is a provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;

(iv) a short description of the liability (whether present or prospective) secured by the charge;

(v) a short description of the property charged;

(vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;

(vii) if the charge is constituted by the issue of debentures in respect of which there is a trustee for debenture holders - the name of the trustee;

(viii) if the charge is not constituted by the issue of debentures or there is no trustee for debenture holders - the name of the chargee;

(ix) such other information as is prescribed;

(b) if, pursuant to a resolution or resolutions passed by the company, the company issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority and the charge is evidenced only by the resolution or resolutions and by the debentures - a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first debenture in the series and a statement in writing verifying the execution of that debenture; and

(c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument —

(i) the instrument; or

(ii) a copy of the instrument verified by a statement in writing to be a true copy and a statement in writing verifying the execution of the instrument.

(2) In a case to which paragraph (1)(b) applies —

(a) the charge shall, for the purposes of subsection (1), be deemed to be created when the first debenture in the series is issued; and

(b) if, after the issue of the first debenture in the series, the company passes a further resolution authorising the issue of debentures in the series, the company shall lodge a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, with the Registrar within 45 days after the passing of that resolution.

(3) A foreign company that applies for registration under this Act shall lodge with the application for registration the documents specified in subsection (4) in relation to a charge on property of the foreign company that would be registrable under this Part if the foreign company were a company incorporated in Norfolk Island.

(4) The documents required to be lodged under subsection (3) are the following:

(a) a notice —

(i) setting out the name of the company;

(ii) if the charge was created by the company - specifying the date of the creation of the charge;

(iii) if the charge was a charge existing on property acquired by the company - setting out the date on which the property was acquired; and

(iv) otherwise complying with the requirements of paragraph (1)(a);

(b) if the charge was created or evidenced as mentioned in paragraph (1)(b) —

(i) in the case of a charge created by the company - a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph and a statement in writing verifying the execution of that debenture; or

(ii) in the case of a charge that existed on property acquired by the company - the copies referred to in subparagraph (i) verified by statements in writing to be true copies;

(c) if the charge was created or evidenced by an instrument otherwise than as mentioned in paragraph (1)(b) —

(i) in the case of a charge created by the company - a copy of the instrument verified by a statement in writing to be a true copy and a statement in writing verifying the execution of the instrument; or

(ii) in the case of a charge that existed on property acquired by the company - a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and

(d) if the charge was created or evidenced as mentioned in paragraph (1)(b) and, after the issue of the first debenture in the series, the company passed a further resolution authorising the issue of debentures in the series - a copy of that resolution verified by a statement in writing to be a true copy.

(5) A notice in relation to a charge, being a charge in relation to which paragraph (1)(b) or (c) or (4)(b) or (c) applies, shall not be taken to have been lodged with the Registrar under subsection (1) or (3) unless the notice is accompanied by the documents specified in that paragraph.

(6) Where a notice with respect to an instrument creating a charge has been lodged under subsection (1) or (3), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, section 256 and Schedule 2 have effect as if charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

(7) Where a payment or discount has been made or allowed, either directly or indirectly, by a company to a person in consideration of his subscribing or agreeing to subscribe, whether conditionally or unconditionally, for debentures or procuring or agreeing to procure subscriptions, whether conditional or unconditional, for debentures, the notice required to be lodged under subsection (1) or (3) shall include particulars as to the amount or rate of the payment or discount.

(8) Where a company issues debentures as security for a debt of the company, the company shall not thereby be regarded as having allowed a discount in respect of the debentures.

Acquisition of property subject to charge

254. (1) Where a company acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a company, the company shall, within 45 days after the acquisition of the property —

(a) lodge with the Registrar —

(i) a notice in relation to the charge, setting out the name of the company and the date on which the property was so acquired and otherwise complying with the requirements of paragraph 253(1)(a);

(ii) if the charge was created or evidenced as mentioned in paragraph 253(1)(b) - a copy of the resolution referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy; and

(iii) if the charge was created or evidenced by an instrument otherwise than as mentioned in paragraph 253(1)(b) - the instrument or each of the instruments or a copy of the instrument verified by a statement in writing to be a true copy; and

(b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) A notice in relation to a charge, being a charge in relation to which subparagraph (1)(a)(ii) or (iii) applies, shall not be taken to have been lodged with the Registrar under subsection (1) unless it is accompanied by the documents specified in that subparagraph.

Registration of documents relating to charges

255. (1) The Registrar shall keep a register to be known as the Register of Company Charges.

(2) Where a notice in respect of a charge on property of a company that is required by this Part to be lodged with the Registrar is lodged with the Registrar (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required to be included in the notice, the Registrar shall forthwith cause to be entered in the Register the time and date when the notice was so lodged and the following particulars in relation to the charge:

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders, or if there is no such trustee, the na me of the chargee.

(3) Subject to subsection (8), where particulars in respect of a charge are entered in the Register in accordance with subsection (2), the charge shall be deemed to be registered and to have been registered from and including the time and date entered in the Register under that subsection.

(4) Where a document that purports to be a notice in respect of a charge on property of a company is lodged with the Registrar (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the company concerned and the particulars referred to in subparagraph 253(1)(a)(vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required by this Part to be included in the notice or is otherwise defective —

(a) the Registrar shall cause to be entered in the Register the time and date when the document was so lodged and such of the particulars referred to in paragraphs (2)(a), (b), (c) and (d) as are ascertainable from the document but shall cause the word "Provisional" to be entered in the Register next to the entry; and

(b) the Registrar shall, by notice in writing to the person who lodged the document, direct the person to lodge with the Registrar, on or before a date specified in the notice, a notice in relation to the charge that complies with the requirements of this Part.

(5) The giving by the Registrar of a direction to a person under paragraph (4)(b) does not affect a liability that the company may have incurred or may incur by reason of a contravention of this Part.

(6) Where the Registrar gives a direction to a person under paragraph (4)(b) in relation to a charge —

(a) if the direction is complied with on or before the date specified in the notice containing the direction, the Registrar shall —

(i) delete from the Register the word "Provisional"; and

(ii) cause to be entered in the Register in relation to the charge any particulars referred to in subsection (2) that have not previously been entered;

(b) if the direction is not complied with on or before that date - the Registrar shall delete from the Register all the particulars that were entered in relation to the charge; and

(c) if the direction is complied with after that date - the Registrar shall cause to be entered in the Register in relation to the charge the time at which and date on which the direction was complied with and the particulars referred to in paragraphs (2)(a), (b), (c) and (d).

(7) The Registrar may enter in the Register, in relation to a charge, in addition to the particulars required by this section to be entered, such other particulars as the Registrar thinks fit.

(8) If the word "Provisional" is entered in the Register next to an entry, the charge shall be deemed not to have been registered but —

(a) where the word "Provisional" is deleted from the Register pursuant to paragraph (6)(a) - the charge shall be deemed to be registered and to have been registered from and including the time and date specified in the Register pursuant to paragraph (4)(a); or

(b) where the particulars in relation to the charge are deleted from the Register pursuant to paragraph (6)(b) and those particulars and a time and date are subsequently entered in the Register in relation to the charge pursuant to paragraph (6)(c) - the charge shall be deemed to be registered from and including that last-mentioned time and date.

(9) Where, pursuant to subsection 253(3), a foreign company lodges with the Registrar notices relating to 2 or more charges on the same property of the foreign company, the time and date that shall be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Registrar.

(10) Where, in accordance with subsection (9), the time and date that are entered in the Register are the same in relation to 2 or more charges on property of a company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Part

(11) Where, pursuant to section 254, a company lodges with the Registrar notices relating to 2 or more charges on the same property acquired by the company (being charges that are not already registered under this Part), the time and date that shall be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Registrar.

(12) Where, in accordance with subsection (11), the time and date that are entered in the Register are the same in relation to 2 or more charges on property acquired by a company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Part.

(13) Where a notice is lodged with the Registrar under section 261 (whether during or after the period within which it was required to be lodged), the Registrar shall forthwith cause to be entered in the Register the time and date when the notice was lodged with the Registrar and the particulars set out in the notice.

Priorities of charges

256. (1) Subject to this section, the provisions of Schedule 2 have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a company.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in Schedule 2 is subject to —

(a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges; and

(b) any agreement between the chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a company shall be deemed, for the purposes of subsection (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge created before the floating charge became fixed, on any of that property unless —

(a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and

(b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Register under section 253, 254 or 261 before the creation of the subsequent registered charge.

(4) Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of subsection 252(1) applies or apply and also relates to other property, the provisions of Schedule 2 apply to the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

(5) The provisions of Schedule 2 do not apply so as to affect the operation of a Commonwealth Act that extends to Norfolk Island.

Certain charges void against liquidator or official manager

257. **(1)** Where —

(a) an order is made, or a resolution is passed, for the winding up of a company; or

(b) an official manager is appointed in respect of a company,

a registrable charge on property of the company is void as a security on that property as against the liquidator or official manager, as the case may be.

(2) Subsection (1) does not apply if —

(a) a notice in respect of the charge was lodged with the Registrar under section 253 or 254, as the case requires —

(i) within the relevant period; or

(ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;

(b) in relation to a charge other than a charge to which subsection 253(3) applies - the period within which a notice in respect of the charge (other than a notice under section 261) is required to be lodged with the Registrar, being the period specified in the relevant section or that period as extended by the Court under section 258, has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (1)(b) and the notice is lodged before the expiration of that period;

(c) in relation to a charge to which subsection 253(3) applies - the period of 45 days after the chargee becomes aware that the foreign company has been registered as a foreign company under this Act has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (1)(b) and the notice is lodged before the expiration of that period; or

(d) in relation to a charge to which section 254 applies - the period of 45 days after the chargee becomes aware that the property charged has been acquired by the company has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (1)(b) and the notice is lodged before the expiration of that period.

(3) The reference in paragraph (2)(a) to the relevant period is a reference —

(a) in relation to a charge to which subsection 253(1) applies - to the period of 45 days specified in that subsection or that period as extended by the Court under section 258; or

(b) in relation to a charge to which subsection 253(3) applies - to the period of 45 days after the chargee becomes aware that the foreign company has been registered as a company under this Act.

(4) Where, after there has been a variation in the terms of a registrable charge on property of a company having the effect of increasing the amount of the debt or increasing the liability (whether present or prospective) secured by the charge —

(a) an order is made, or a resolution is passed, for the winding up of the company; or

(b) an official manager is appointed in respect of the company,

that registrable charge is voidable as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless —

(c) a notice in respect of the variation was lodged under section 261 —

(i) within the period of 45 days specified in subsection 261(2) or that period as extended by the Court under section 258; or

(ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be; or

(d) the period referred to in subparagraph (c)(i) has not expired at the commencement of the winding up or at the time of appointment of the official manager and the notice is lodged before the expiration of that period.

Court may extend period

258. If the Court is satisfied that the failure to lodge a notice in respect of a charge or in respect of a variation in the terms of a charge as required by any provision of this Part —

(a) was accidental or due to inadvertence or to some other sufficient cause; or

(b) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just to grant relief, the Court may, on the application of the company or of a person interested and on such terms and conditions as are just, by order, extend the period for lodgment for a further period specified in the order.

Avoidance of certain later charges

259. (1) Where —

(a) a registrable charge (in this section referred to as "the later charge") is created before the expiration of 45 days after the creation of an unregistered registrable charge (in this section referred to as "the earlier charge");

(b) the later charge relates to all or any of the property to which the earlier charge related; and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or a part of that liability,

the later charge, to the extent to which it is a security for the same liability or part, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the company.

(2) Subsection (1) has effect notwithstanding that a notice in respect of the later charge was lodged with the Registrar under section 253 within a period mentioned in paragraph 257(2)(a) or (b) unless the Court is satisfied that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the operation of this Part.

Rights of third parties without notice

260. (1) Subsection 257(1) or (4) does not operate to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of —

(a) the filing of an application for an order for the winding up of the company;

(b) the passing of a resolution for the voluntary winding up of the company; or

(c) the passing of a resolution that the company be placed under official management.

(2) The burden of proving that a person purchased property as mentioned in subsection (1) is on the person asserting that the property was so purchased.

Assignment and variation of charges

261. (1) Where, after a registrable charge on property of a company has been created, a person other than the original chargee becomes the holder of the charge, that person shall, within 45 days after he becomes the holder of the charge —

(a) lodge with the Registrar a notice stating that he has become the holder of the charge; and

(b) give to the company a copy of the notice.

(2) Where, after a registrable charge on property of a company has been created, there is a variation in the terms of the charge having the effect of —

increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or

prohibiting or restricting the creation of subsequent charges on the property,

the company shall, within 45 days after the variation occurs, ensure that there is lodged with the Registrar a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) Where a charge created by a company secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the company in accordance with the terms of the charge shall not be taken, for the purposes of subsection (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this section to the chargee in relation to a charge is, if the charge is constituted by debentures and there is a trustee for debenture holders, a reference to the trustee for debenture holders.

(5) Section 253 does not require the lodgment of a notice under that section in relation to a charge by reason only that the terms of the charge are varied in a manner mentioned in this section and not otherwise.

Satisfaction of, and release of property from, charges

262. (1) Where, with respect to a charge registered under this Part —

(a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or

(b) the property charged or part of that property has been released from the charge,

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, within 14 days after receipt of a request in writing made by the company on whose property the charge exists, give to the company a memorandum acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

(2) The company may lodge the memorandum with the Registrar and, upon the memorandum being so lodged, the Registrar shall enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in subsection (1) to the person who was the holder of a charge at the time when the debt or other liability was paid or discharged or the property or part of the property was released is, if the charge was constituted by debentures and there was a trustee for the debenture holders, a reference to the person who was, at that time, the trustee for the debenture holders.

Lodgment of notices, offences, etc

263. (1) Where a notice in respect of a charge on property of a company is required to be lodged with the Registrar under section 253 or 254 or subsection 261 (2), the notice may be lodged by the company or by some interested person.

(2) Where default is made in complying with section 253 or 254 or subsection 261(2) in relation to a registrable charge on property of a company, the company and any officer of the company who is in default are each guilty of an offence.

(3) Where a person who becomes the holder of a registrable charge fails to comply with subsection 261(1), the person and, if the person is a corporation, any officer of the corporation who is in default, are each guilty of an offence.

(4) Where a document required by this Part other than subsection 261(1) to be lodged with the Registrar is so lodged by a person other than the company concerned, that person —

(a) shall, within 7 days after the lodgment of the document, give to the company a copy of the document; and

(b) is entitled to recover from the company the amount of any fees properly paid by him on lodgment of the document.

Company to keep documents relating to charges and register of charges

264. (1) A company shall keep, at the place where the register referred to in subsection (2) is kept, a copy of each document relating to a charge on property of the company that is lodged with the Registrar under this Part or was lodged with the Registrar of Companies under the repealed laws and a copy of each document that is given to the company under this Part.

(2) A company shall keep a register and shall, upon the creation of a charge (whether registrable or not) on property of the company, or upon the acquisition of property subject to a charge (whether registrable or not), forthwith enter in the register particulars of the charge, including —

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was acquired;

(b) a short description of the liability (whether contingent or otherwise) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and

(e) the name of the person whom the company believes to be the holder of the charge.

(3) A register kept by a company pursuant to subsection (2) shall be open for inspection —

(a) by a creditor or member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(4) A person may request a company to furnish him with a copy of the register or of a part of the register and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as the Registrar allows.

(5) If default is made in complying with a provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

Certificates

265. (1) Where particulars of a charge are entered in the Register in accordance with this Part, the Registrar shall, on request by a person, give to that person a certificate under the seal of the Registrar setting out those particulars and stating the time and date when a notice in respect of the charge containing those particulars was lodged with the Registrar and, if the word "Provisional" appears in the Register next to the entry, stating that fact.

(2) A certificate under subsection (1) is evidence of matters stated in the certificate.

(3) Where particulars of a charge are entered in the Register in accordance with this Part and the word "Provisional" does not appear in the Register next to the entry, the Registrar shall, on request by any person, give to that person a certificate under the seal of the Registrar stating that particulars of the charge are entered in the Register in accordance with this Part.

(4) A certificate under subsection (3) is conclusive evidence that the requirements of this Part as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged with the Registrar) have been complied with.

Power of Court to rectify Register,

266. Where the Court is satisfied that —

(a) a particular with respect to a registrable charge on property of a company has been omitted from, or mis-stated in, the Register or a memorandum referred to in section 262; and

(b) the omission or mis-statement —

(i) was accidental or due to inadvertence or to some other sufficient cause; or

(ii) is not of a nature to prejudice creditors or shareholders,

or that on other grounds it is just to grant relief,

the Court may, on the application of the company or of a person interested and on such terms and conditions as are just, order that the omission or mis-statement be rectified.

Exemption from compliance with certain requirements

267. (1) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to any conditions specified in the instrument, from compliance with such of the requirements of section 253, 254 or 261 relating to —

(a) the particulars to be contained in a notice under the relevant section;

(b) the documents (other than the notice) to be lodged under the relevant section; or

(c) the verification of a document required to be lodged under the relevant section,

as are specified in the instrument.

(2) A person who is so exempted by the Registrar subject to a condition shall not contravene or fail to comply with the condition.

(3) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the Registrar, order the person to comply with the condition.

Charges created before commencement of this Act

268. Notwithstanding the repeals effected by section 4, the provisions of the repealed laws as to the registration of charges created by companies and any other provisions of those laws that are necessary for the effectual operation of those provisions, continue in force as if this Act had not been enacted, in relation to —

(a) a charge created by a company before the commencement of this Act; and

(b) a charge to which property acquired by a company before the commencement of this Act was subject when the property was so acquired,

and the provisions of this Part do not apply in relation to the charge.

PART 12 — MODIFICATION OF CERTAIN PROVISIONS

Banking business

269. **(1)** Subject to subsection (3) —

(a) nothing in a prescribed provision applies to or in relation to anything done or to be done by a banking corporation in the ordinary course of its banking business;

(b) a banking corporation is not required to comply with a prescribed provision in respect of anything done or to be done by the corporation in the ordinary course of its banking business; and

(c) a banking corporation shall not be taken, by reason of anything done or to be done by the corporation in the ordinary course of its banking business, to be a borrowing company for the purposes of a prescribed provision.

(2) In subsection (1), "prescribed provision" means a provision of Part 5 or 9 or of section 641.

(3) Where —

(a) a borrowing company is required by subsection 221(1) to make provision in a trust deed for the appointment of a corporation as a trustee for the holders of debentures; and

(b) a banking corporation is appointed as a trustee for the holders of those debentures,

subsection (1) does not affect the application of a provision of this Act to or in relation to the banking corporation in its capacity as trustee for the holders of those debentures.

Powers of Registrar

270. **(1)** This section applies to the provisions contained in Parts 5, 6, and 9.

(2) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to any conditions specified in the instrument, from compliance with all or any of the following:

(a) the provisions to which this section applies;

(b) the regulations made for the purposes of any of those provisions;

(c) section 641.

(3) Without limiting the generality of subsection (2), an exemption under that subsection may relate to particular securities or to securities included in a class of securities.

(4) A person shall not contravene or fail to comply with a condition to which an exemption under subsection (2) is subject.

(5) Where a person has contravened or failed to comply with such a condition, the Court may, on the application of the Registrar, order the person to comply with the condition.

(6) The Registrar may, by instrument in writing, declare that a provision to which this section applies and regulations made for the purposes of such a provision shall have effect in their application to or in relation to a particular person or particular persons —

(a) in a particular case; or

(b) in relation to particular securities or to the securities included in a particular class of securities,

as if the provision or regulation specified in the instrument was omitted, modified or varied in a manner specified in the instrument and, where such a declaration is made, that provision and regulation have effect accordingly.

(7) The Registrar may, by instrument in writing, declare that section 641 shall have effect in its application to or in relation to a particular person or particular persons —

(a) in a particular case; or

(b) in relation to particular securities or to the securities included in a particular class of securities,

as if a provision of that section specified in the instrument were omitted, modified or varied in a manner specified in the instrument and, where such a declaration is made, the section has effect accordingly.

(8) The Registrar shall cause a copy of an instrument executed under this section to be published in the Gazette but failure of the Registrar to do so does not affect the validity of the instrument.

PART 13 — MANAGEMENT AND ADMINISTRATION

Division 1 — Office and Name

Registered office of company

271. (1) A company shall, from and including the day of its incorporation under this Act, have a registered office in Norfolk Island.

(2) The office shall be situated in a building and shall be open and accessible to the public —

(a) where a notice has been lodged by the company with the Registrar under subsection 272(2) or under the corresponding provision of the repealed laws - for such hours (being not less than 3) between the hours of 9 a.m. and 5 p.m. of each day (Saturdays, Sundays and holidays excepted) as are specified in that notice or in a notice lodged by the company with the Registrar under subsection 272(4) or under the corresponding provision of the repealed laws; or

(b) where a notice has not been lodged by the company with the Registrar under subsection 272(2) or under the corresponding provision of the repealed laws - for not less than 5 hours between the hours of 10 a.m. and 5 p.m. of each day (Saturdays, Sundays and holidays excepted).

(3) If default is made in complying with subsection (1) or (2), the company and any officer of the company who is in default are each guilty of an offence.

(4) In this section, a reference to 5 p.m. is, in respect of a Wednesday, a reference to 1 p.m.

Notice of address of registered office and office hours

272. (1) On the lodging of the memorandum of a proposed company for registration, there shall be lodged with it a notice of the address of the proposed registered office of the company.

(2) On the lodging of the memorandum of a proposed company for registration or at some later time, notice of the hours during which the registered office of the company is to be open and accessible to the public may be lodged with the memorandum.

(3) Notice of a change in the situation of the registered office of a company shall be lodged by the company with the Registrar not later than 7 days after the day on which the change occurs.

(4) Where a notice has been lodged by a company under subsection (2) or under the corresponding provision of the repealed laws, notice of a change of the hours during which the registered office of the company is open and accessible to the public shall be lodged by the company with the Registrar not later than 7 days after the day on which the change occurs.

(5) If default is made in complying with subsection (3) or (4), the company and any officer of the company who is in default are each guilty of an offence.

Publication of name

273. **(1)** The name of a company shall appear in legible characters on —

(a) the common seal and every other seal of the company; and

(b) each business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the company, whether or not the company is carrying on a business under a business name.

(2) If an officer of a company or a person on behalf of a company —

(a) uses or authorises the use of a seal that purports to be a seal of the company but on which the name of the company does not appear as required by subsection (1);

(b) issues or authorises the issue of a business letter, statement of account, invoice, order for goods, order for services or official notice or publication of the company on which the name of the company does not appear as required by subsection (1); or

(c) signs, issues or authorises to be signed or issued on behalf of the company a bill of exchange, promissory note, cheque or other negotiable instrument, an endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument or a receipt or letter of credit, on which the name of the company does not appear as required by subsection (1),

he is guilty of an offence.

Penalty: 10 penalty units.

(3) If an officer of a company or a person on behalf of a company contravenes paragraph 2(b) or (c), he is liable to the holder of the instrument or letter of credit concerned for the amount due on it unless that amount is paid by the company.

(4) A company shall paint or affix, and keep painted or affixed, on the outside of each office or place in which its business is carried on, in a conspicuous position and in letters easily legible, its name, and also, in the case of the registered office, the words "Registered Office".

(5) If default is made in complying with subsection (1) or (4), the company is guilty of an offence.

Penalty: 10 penalty units.

Division 2 — Directors and other Officers

Directors

274. **(1)** A public company shall have at least 3 directors and a proprietary company shall have at least 2 directors.

(2) At least 2 directors of a public company shall be natural persons and at least one director of a proprietary company shall be a natural person.

(3) Where the articles of a company incorporated before the date of commencement of this Act provide for the appointment of one director only, the articles shall, from and including that date, be deemed to provide for the appointment of 2 directors, being natural persons.

(4) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Restrictions on appointment or advertisement of director

275. (1) a person shall not be named as a director or proposed director in the memorandum or articles of a company, or in a prospectus, unless, before the registration of the memorandum or articles or the issue of the prospectus, as the case may be, by himself or by his agent authorised in writing for the purpose, he has signed and lodged with the Registrar a consent in writing to act as a director and has —

(a) signed the memorandum for a number of shares not less than his qualification (if any);

(b) signed and lodged with the Registrar an undertaking in writing to take from the company and pay for his qualification shares (if any);

(c) made and lodged with the Registrar a statement in writing to the effect that a number of shares, not less than his qualification (if any), are registered in his name; or

(d) in the case of a company formed, or intended to be formed, by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or in the corporations included in a group of corporations - made and lodged with the Registrar a statement in writing that he was a shareholder in that other corporation or in one or more of the corporations included in that group and that, as a shareholder, he will be entitled to receive and have registered in his name a number of shares not less than his qualification by virtue of the terms of an agreement relating to the reconstruction.

(2) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he is, as regards those shares, in the same position as if he had signed the memorandum for that number of shares.

(3) The foregoing provisions of this section (other than the provisions relating to the signing of a consent to act as director) do not apply to —

(a) a company that does not have a share capital;

(b) a proprietary company; or

(c) a prospectus issued by or on behalf of a company or the articles adopted by a company after the expiration of one year from the date of incorporation of the company.

(4) On the lodging of the memorandum of a company for registration, the persons desiring the incorporation of the company shall lodge with it a list, certified by one of those persons to be correct, of the persons who have consented to be directors of the company.

(5) If the list contains the name of a person who has not so consented, the person who certified the list to be correct is guilty of an offence.

Qualifications of directors

276. (1) A director who is by the articles required to hold a specified share qualification and is not already qualified shall obtain his qualification within 2 months after his appointment or within such shorter period as is fixed by the articles.

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

(3) Subsection (1) does not affect the operation of any of the preceding provisions of this Division.

Vacation of office

277. (1) The office of a director of a company is, by force of this section, vacated if the director —

(a) has not within the period referred to in subsection 276(1) obtained his qualification;

(b) after so obtaining his qualification, ceases to hold his qualification;

(c) becomes an insolvent under administration;

(d) is convicted of an offence referred to in subsection 282(2); or

(e) becomes a person subject to a restriction.

(2) A person whose office is vacated by reason of paragraph (1)(a) or (b) is incapable of being re-appointed as a director until he has obtained his qualification.

(3) A person whose office is vacated by reason of paragraph (1)(c) is incapable, without the leave of the Court, of being re-appointed as a director of a company until he ceases to be an insolvent under administration.

(4) A person whose office is vacated by reason of paragraph (1)(d) is incapable, except with the leave of the Court, of being appointed as a director of a company until the expiration of the period of 5 years referred to in subsection 282(2).

(5) A person whose office is vacated by reason of his being a person referred to in paragraph 12(a) or (b) is incapable of being appointed as a director of a company until the expiration of the period specified in the relevant order of the Court.

(6) A person whose office is vacated by reason of his being a person referred to in paragraph (12)(c) is incapable, except with the leave of the Court, of being appointed as a director of a company until the expiration of the period specified in the notice referred to in that paragraph.

(7) A person whose office is vacated by reason of paragraph (1)(a) or (b) shall not purport to act as a director of the company unless he is validly reappointed as a director.

Penalty: 10 penalty units or imprisonment or both.

Appointment of directors to be voted on individually

278. (1) At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution shall not be moved unless a resolution that it be so moved has first been agreed to by the meeting without a vote being cast against it.

(2) A resolution passed pursuant to a motion moved in contravention of this section is void, whether objection was made at the time or not.

(3) Where a resolution pursuant to a motion moved in contravention of this section is passed, a provision for the automatic re-appointment of retiring directors in default of another appointment does not apply.

(4) For the purposes of this section, a motion for approving the appointment of a person or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) This section does not —

(a) apply to a resolution altering the company's articles; or

(b) to prevent the election of 2 or more directors by ballot or poll.

Validity of acts of directors and secretaries

279. (1) The acts of a director or secretary of a corporation are valid notwithstanding a defect that is afterwards discovered in his appointment or qualification.

(2) Where a person whose office as director of a corporation is vacated pursuant to subsection 277(1) purports to do an act as director of the corporation, that act is valid, in relation to a person dealing with the corporation in good faith and for value and without actual knowledge of the matter by reason of which the office of the first-mentioned person was vacated, as if that office had not been vacated.

Removal of directors

280. (1) A public company may, by resolution, remove a director before the expiration of his period of office, notwithstanding anything in its articles or in an agreement between it and him but, where a director so removed was appointed to represent the interests of a particular class of shareholders or debenture holders, the resolution to remove him does not take effect until his successor has been appointed.

(2) Special notice is required of a resolution to remove a director under this section or to appoint a person in place of a director so removed at the meeting at which he is removed.

(3) On receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of the notice to the director concerned and the director (whether or not he is a member of the company) is entitled to be heard on the matter at the meeting.

(4) Where notice is given pursuant to subsection (2) and the director concerned makes with respect to the notice representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so —

(a) in any notice of the intended resolution given to members of the company - state the fact of the representations having been made; and

(b) send a copy of the representations to each member of the company to whom notice of the meeting has been or is sent.

(5) If a copy of the representations is not so sent because they were received too late or because of the company's default, the director may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(6) Notwithstanding the foregoing provisions of this section, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of some other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are not being exercised in good faith.

(7) The Court may order the costs of the company or of the other person on an application under subsection (6) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(8) A vacancy created by the removal of a director under this section that is not filled at the meeting at which he is removed may be filled as a casual vacancy.

(9) A person appointed as director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he was appointed was last appointed a director.

(10) The preceding provisions of this section do not deprive a person removed under those provisions of compensation or damages payable to him in respect of the termination of his appointment as director or of an appointment terminating with that as director or as affecting a power to remove a director that exists apart from this section.

(11) Notwithstanding anything in the articles or in an agreement, a director of a public company shall not be removed by, or be required to vacate his office by reason of, a resolution, request or notice of the directors or of any of them.

Age of directors

281. (1) Subject to this section, a person who has attained the age of 72 years shall not be appointed or act as a director of a public company or of the subsidiary of a public company.

(2) Subsection (1) does not prevent a person from acting as a director of a company during the period commencing on the day on which he attains the age of 72 years and ending at the conclusion of the next annual general meeting commencing after that day.

(3) The office of a director of a company or of a subsidiary of a public company becomes vacant at the conclusion of the next annual general meeting of the company that commences after the director attains the age of 72 years.

(4) An act done by a person as director is valid notwithstanding that it is afterwards discovered that he had attained the age of 72 years at the time of his appointment or that his appointment had terminated by virtue of subsection (2).

(5) Where the office of a director has become vacant by virtue of subsection (3), a provision for the automatic re-appointment of retiring directors in default of another appointment does not apply in relation to that director.

(6) If a vacancy created by virtue of subsection (3) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(7) Subject to subsection (8), a person who has attained the age of 72 years may, by a resolution stating the age of that person, being a resolution —

(a) of which not less than 14 days' written notice has been given to the members of the company entitled to vote stating that the person is a candidate for election who has attained the age of 72 years and stating his age; and

(b) that is passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of the company,

be appointed or re-appointed as a director of that company to hold office until the conclusion of the next annual general meeting of the company.

(8) Where the company is a subsidiary of a public company, the appointment or re-appointment referred to in subsection (7) does not have effect unless —

(a) the person appointed or re-appointed is a director of the holding company; or

(b) the appointment or re-appointment of the person as a director of the company has been approved by a resolution of the holding company —

(i) of which not less than 14 days' written notice was given to the members of the holding company entitled to vote stating that the person was a candidate for election as a director of the company who has attained the age of 72 years and stating his age; and

(ii) which was passed by a majority of not less than three-quarters of such members of the holding company as, being entitled so to do, voted in person or, where proxies were allowed, by proxy at a general meeting of the holding company.

(9) Where the articles of a company limited by guarantee provide for the holding of a postal ballot for the election of a director or directors and such a postal ballot is held, being a postal ballot —

(a) of which the members entitled to vote have been given notice in writing by the company stating that a candidate for election has attained the age of 72 years and stating the age of the candidate; and

(b) in which that candidate is elected by a majority of not less than three-quarters of the members who, being entitled to vote, vote in the ballot,

that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next annual general meeting of the company.

(10) Where the articles of a company limited by guarantee provide for the election or appointment of a director or directors otherwise than by members at a general meeting or by a postal ballot of members and the Registrar, by instrument in writing, declares that this section does not apply to the company or its directors, then, subject to such conditions (if any) as the Registrar specifies in the instrument, this section does not so apply.

(11) A vacancy in the office of a director occurring by virtue of subsection (3) shall not be taken into account in determining when other directors are to retire.

(12) This section does not affect the operation of a provision of the memorandum or articles of a company preventing a person from being appointed a director or requiring a director to vacate his office at any age less than 72 years.

(13) A person who has not attained the age of 18 years is incapable of being appointed as a director of a company.

Certain persons not to manage corporations

282. (1) A person who is an insolvent under administration shall not be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation except with the leave of the Court.

Penalty: 50 penalty units or imprisonment or both.

(2) A person who has, whether before or after the commencement of this Act, been convicted, whether in Norfolk Island or elsewhere —

(a) on indictment of an offence in connection with the promotion, formation or management of a corporation; or

(b) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months,

shall not, within a period of 5 years after his conviction or, if he was sentenced to imprisonment, after his release from prison, except with the leave of the Court, be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation.

Penalty: 50 penalty units or imprisonment or both.

(3) In a proceeding for an offence against subsection (2), a certificate by a prescribed authority stating that a person was released from prison on a specified date is evidence that that person was released from prison on that date.

(4) When granting leave under this section, the Court may impose such conditions or limitations as it thinks just and a person who contravenes or fails to comply with such a condition or limitation that is applicable to him is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(5) A person intending to apply for leave of the Court under this section shall give to the Registrar not less than 21 days' notice of his intention so to apply.

(6) The Court may at any time, on the application of the Registrar, revoke leave granted by the Court under this section or vary any conditions or limitations to which the leave is subject.

Court may order persons not to manage corporations

283. **(1)** Where, on application by the Registrar, the Court is satisfied —

(a) that —

(i) a corporation has, during a period in which a person (in this subsection referred to as "the relevant person") was a relevant officer of the corporation, repeatedly breached relevant legislation; and

(ii) the relevant person failed to take reasonable steps to prevent the corporation so breaching relevant legislation;

(b) that —

(i) each of 2 or more corporations has at a time when a person (in this subsection also referred to as "the relevant person") was a relevant officer of the corporation, breached relevant legislation; and

(ii) in each case the relevant person failed to take reasonable steps to prevent the corporation breaching relevant legislation;

(c) that —

(i) a person (in this subsection also referred to as "the relevant person") has repeatedly breached relevant legislation; and

(ii) on 2 or more of the occasions when the relevant person breached relevant legislation, he was a relevant officer of a corporation (whether or not he was a relevant officer of the same corporation on each of those occasions); or

(d) that, at a time during a period in which a person (in this subsection also referred to as "the relevant person") has been or was a relevant officer of a corporation, the relevant person acted dishonestly, or failed to exercise a reasonable degree of care and diligence, in the performance of his duties as an officer of the corporation,

the Court may, in its discretion, by order prohibit the relevant person, for such period as is specified in the order, from being a director or promoter of, or from being in any way (whether directly or indirectly) concerned in or taking part in the management of, a corporation.

(2) A person shall not contravene an order made under subsection (1) that is applicable to him.

Penalty: 50 penalty units or imprisonment or both.

(3) A person shall not contravene an order made under a provision of a law of a State or of a Territory other than Norfolk Island that corresponds with subsection (1), being an order that is applicable to him.

Penalty: 50 penalty units or imprisonment or both.

(4) In this section —

(a) a reference to a contravention of, or a failure to comply with, a provision of a relevant Act includes a reference to such a contravention or failure to comply that occurred before the date of commencement of this Act; and

(b) a reference to a period in which a person has been or was a relevant officer of a corporation includes a reference to such a period that elapsed, or part of which elapsed, before that date.

(5) For the purposes of this section —

(a) a corporation or other person shall be taken to have breached relevant legislation if the corporation or other person has contravened or failed to comply with a provision of a relevant Act; and

(b) a corporation or other person may be taken to have breached relevant legislation repeatedly if the corporation or the other person has —

(i) on 2 or more occasions, contravened or failed to comply with a particular provision of a relevant Act;

(ii) contravened or failed to comply with 2 or more provisions of a relevant Act; or

(iii) contravened or failed to comply with the provisions of 2 or more relevant Acts.

(6) For the purposes of this section —

(a) each of the following persons is a prescribed person in relation to a corporation:

(i) an official manager, liquidator or provisional liquidator of the corporation;

(ii) a member of the corporation;

(iii) a creditor of the corporation;

(b) each of the following laws is a relevant Act:

(i) this Act;

(ii) the repealed laws;

(iii) a law of a State or of a Territory other than Norfolk Island relating to companies;

(iv) a previous law of a State or of a Territory other than Norfolk Island relating to companies; and

(c) "relevant officer", in relation to a corporation, means a director, secretary or executive officer of the corporation.

Disclosure of interests in contracts, property, offices, etc

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

Penalty: 10 penalty units or imprisonment or both.

(2) Subsection (1) does not apply where the interest of a director consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the company if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a company shall not be taken to be interested or to have been at any time interested in a contract or proposed contract by reason only —

(a) where the contract or proposed contract relates to a loan to the company - that he guaranteed or joined in guaranteeing the repayment of the loan or some part of the loan; or

(b) where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a corporation that is related to the company - that he is a director of that corporation.

(4) Subsection (3) has effect not only for the purposes of this Act but also for the purposes of any rule of law but does not affect the operation of a provision in the articles of the company.

(5) For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to a contract so made or proposed to be made if —

(a) the notice states the nature and extent of the interest of the director in the corporation or firm;

(b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his interest in the corporation or firm is not greater than as stated in the notice; and

(c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is read at the next meeting of the directors after it is given.

(6) A director of a company who holds an office or possesses property in consequence of which, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director shall, in accordance with subsection (7), declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

Penalty: 10 penalty units or imprisonment or both.

(7) A declaration required by subsection (6) in relation to the holding of an office or the possession of property shall be made —

(a) where the person holds the office or possesses the property as mentioned in subsection (6) when he becomes a director - at the first meeting of directors held after —

(i) he becomes a director; or

(ii) the relevant facts as to the holding of the office or the possession of the property come to his knowledge,

which ever is the later; or

(b) where the person commences to hold the office or comes into possession of the property as mentioned in subsection (6) after he becomes a director - at the first meeting of directors held after the relevant facts as to the holding of the office or the possession of the property come to his knowledge.

(8) A secretary of a company shall record each declaration under this section in the minutes of the meeting at which it was made.

(9) Except as provided by subsection (3), this section is in addition to, and does not affect the operation of, any rule of law or any provision in the articles restricting a director from having an interest in contracts with the company or from holding an office or possessing property involving duties or interests in conflict with his duties or interests as a director.

Duty and liability of officers

285. (1) An officer of a corporation shall at all times act honestly in the exercise of his powers and the discharge of the duties of his office.

Penalty: (a) in a case to which paragraph (b) does not apply - 50 penalty units; or

(b) where the offence was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of some other person or for some other fraudulent purpose - 200 penalty units or imprisonment or both.

(2) An officer of a corporation shall at all times exercise reasonable care and diligence in the exercise of his powers and the discharge of his duties.

Penalty: 50 penalty units.

(3) An officer or employee of a corporation, or a former officer or employee of a corporation, shall not make improper use of information acquired by virtue of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for some other person or to cause detriment to the corporation.

Penalty: 20 penalty units or imprisonment or both.

(4) An officer or employee of a corporation shall not make improper use of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for some other person or to cause detriment to the corporation.

Penalty: 20 penalty units or imprisonment or both.

(5) For the purposes of this section, "officer", in relation to a corporation, means —

(a) a director, secretary or executive officer of the corporation;

(b) a receiver or manager of the corporation or other authorised person who assumes control of property of the corporation for the purpose of enforcing a charge;

(c) an official manager or a deputy official manager of the corporation;

(d) a liquidator of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and some other person.

(6) Where —

(a) a person is convicted of an offence under this section; and

(b) the Court by or before which he is convicted is satisfied that the corporation has suffered loss or damage as a result of the act or omission that constituted the offence,

the Court may, in addition to imposing a penalty, order the convicted person to pay compensation to the corporation of such amount as is just and the order may be enforced as if it were a judgment of that Court.

(7) Where a person contravenes or fails to comply with a provision of this section in relation to a corporation, the corporation may, whether or not the person has been convicted of an offence under this section in relation to that contravention or failure, recover from the person as a debt due to the corporation by action in a court of competent jurisdiction —

(a) if that person or some other person made a profit as a result of the contravention or failure - an amount equal to the amount of that profit; and

(b) if the corporation has suffered loss or damage as a result of the contravention or failure - an amount equal to the amount of that loss or damage.

(8) This section has effect in addition to, and does not affect the operation of, any rule of law relating to the duty or liability of a person by reason of his office or employment in relation to a corporation and does not prevent the institution of a civil proceeding in respect of a breach of such a duty or in respect of such a liability.

Loans to directors

286. (1) A company shall not, whether directly or indirectly —

(a) make a loan to —

(i) a director of the company, a spouse of such a director or a relative of such a director or spouse;

(ii) a director of a corporation that is related to the company, a spouse of such a director or a relative of such a director or spouse;

(iii) a trustee of a trust under which a person referred to in subparagraph (i) or (ii) has a beneficial interest, where the loan is made to the trustee in his capacity as trustee;

(iv) a trustee of a trust under which a corporation has a beneficial interest, where a person referred to in subparagraph (i) or (ii) has, or 2 or more such persons together have, a direct or indirect beneficial interest in shares in the corporation the nominal value of which is not less than 10% of the nominal value of the issued share capital of the corporation, where the loan is made to the trustee in his capacity as trustee; or

(v) a corporation where a person referred to in subparagraph (i) or (ii) has, or 2 or more such persons together have, a direct or indirect beneficial interest in shares in the corporation the nominal value of which is not less than 10% of the nominal value of the issued share capital of the corporation; or

(b) give a guarantee or provide security in connection with a loan made or to be made by another person to a natural person or corporation referred to in paragraph (a).

(2) Where a company —

(a) makes a loan to a corporation, or gives a guarantee or provides security in connection with a loan made to a corporation; or

(b) makes a loan to a trustee of a trust under which a corporation has a beneficial interest, or gives a guarantee or provides security in connection with a loan made to a trustee of a trust under which a corporation has a beneficial interest,

a person or persons shall not be taken for the purposes of subsection (1) to have a beneficial interest in shares in the corporation by reason only that the company has a relevant interest or relevant interests in shares in the corporation and the person has or the persons have a relevant interest or relevant interests in shares in the company.

(3) This section does not prevent a company from recovering the amount of, or of interest on, a loan made, or an amount for which it becomes liable under a guarantee given or in respect of a security provided, contrary to the provisions of this section.

Exceptions

287. (1) Section 286 does not apply —

(a) to anything done by an exempt proprietary company;

(b) to a loan made by a company to, or a guarantee given or security provided by a company in relation to, a corporation that is related to the company if the making of the loan, the giving of the guarantee or the provision of the security has been authorised by a resolution of the directors;

(c) subject to subsection (2), to anything done by a company to provide a person with moneys to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him to perform properly his duties as an officer of the company;

(d) subject to subsection (2), to anything done by a company to provide a person who is engaged in the full-time employment of the company or of a corporation that is related to the company with moneys to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring premises to be used by him as his principal place of residence;

(e) to a loan made by a company to a person who is engaged in the full-time employment of the company or of a corporation that is related to the company, if —

(i) where neither subparagraph (ii) nor (iii) applies - the company has at a general meeting;

(ii) where the company is a subsidiary of a listed corporation or listed corporations - the company and the listed corporation or listed corporations have at general meetings; or

(iii) where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in a State or in a Territory other than Norfolk Island - the company and the ultimate holding company have at general meetings,

approved a scheme for the making of such loans and the loan is made in accordance with the scheme; or

(f) to a loan made, guarantee given or security provided by a company in the ordinary course of its ordinary business where —

(i) that business includes the lending of money, the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the company or in respect of which the company gives the guarantee or provides the security is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise.

(2) Paragraph (1)(c) or (d) does not authorise the making of a loan, the giving of a guarantee or the provision of a security except —

(a) with the prior approval —

(i) where both subparagraphs (ii) and (iii) do not apply - of the company;

(ii) where the company is a subsidiary of a listed corporation or listed corporations - of the company and the listed corporation or listed corporations; or

(iii) where the company is not a subsidiary of a listed corporation but is a subsidiary where the ultimate holding company is incorporated in Australia or in a Territory other than Norfolk Island - of the company and the ultimate holding company,

given at a general meeting of the company or at general meetings of the company and the listed corporation or listed corporations, as the case may be, at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that if the making of the loan, the giving of the guarantee or the provision of the security is not approved —

(i) where both subparagraphs (ii) and (iii) do not apply - by the company at or before the next annual general meeting of the company; or

(ii) where the company is a subsidiary of a listed corporation or listed corporations - by the company at or before the next annual general meeting of the company or by the listed corporation at or before the next annual general meeting of the listed corporation concerned,

the loan be repaid or the liability under the guarantee or security be discharged, as the case may be, within 6 months after the conclusion of that meeting.

Liability of directors and officers

288. (1) Where a company makes a loan, gives a guarantee or provides security in contravention of section 286, the company is, notwithstanding section 660, not guilty of an offence but —

(a) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a director of the company or of a corporation that is related to the company, to a spouse of such a director or to a relative of such a director or spouse - the director and any officers of the company who are in default are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against loss arising from the making of the loan, the giving of the guarantee or the provision of the security, as the case may be; or

(b) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust referred to in subparagraph 286(1)(a)(iii) - a director of the company, or of a corporation that is related to the company, by virtue of whose beneficial interest under the trust the making of the loan, the giving of the guarantee or the provision of the security contravened section 286, and any other officers of that company who are in default, are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against loss arising from the making of the loan, the giving of the guarantee or the provision of the security, as the case may be;

(c) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust under which a corporation (in this paragraph referred to as "the relevant corporation") has a beneficial interest in circumstances referred to in subparagraph 286(1)(a)(iv) - a director of the company, or of a corporation that is related to the company, by virtue of whose beneficial interest in shares in the relevant corporation the making of the loan, the giving of the guarantee or the provision of the security contravened section 286, and any other officers of that company or of the relevant corporation who are in default, are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be; or

(d) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a corporation referred to in subparagraph 286(1)(a)(v) (in this paragraph referred to as "the relevant corporation") - a director of the company, or of a corporation that is related to the company, by virtue of whose beneficial interest in shares in the relevant corporation the making of the loan, the giving of the guarantee or the provision of the security contravened section 286, and any other officers of that company or of the relevant corporation who are in default, are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be.

Penalty —

(e) where the offence was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of some other person or for some other fraudulent purpose - 200 penalty units or imprisonment or both; or

(f) in a case to which paragraph (e) does not apply - 50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) or to a proceeding instituted in respect of a liability under that subsection if the defendant proves that he had no knowledge of the making of the loan, the giving of the guarantee or the provision of the security.

Enforcement of guarantee or security

289. (1) If a person has made a loan in relation to which a company has given a guarantee or provided security in contravention of section 286, the person may enforce the guarantee or security against the company if —

(a) where the company is a proprietary company - a certificate signed by a director and a secretary of the company certifying that the company was an exempt proprietary company was furnished to the person before the guarantee was given or the security provided; or

(b) in any other case - a certificate signed by a director and a secretary of the company certifying that the company was not prohibited by section 286 from giving the guarantee or providing the security was furnished to the person before the guarantee was given or the security provided and the person did not know, and had no reason to believe, that the certificate was incorrect.

(2) A director or secretary of a company who furnishes a person with a certificate referred to in subsection (1) that is false is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

Sections not exclusive

290. Sections 286 to 289 (inclusive) have effect in addition to, and do not affect the operation of, any other law.

Register of directors' shareholdings etc

291. (1) A company shall keep a register showing with respect to each director of the company particulars of —

(a) shares in the company or in a corporation that is related to the company, being shares in which the director has a relevant interest, and the nature and extent of that interest;

(b) debentures of the company or of a corporation that is related to the company, being debentures in which the director has a relevant interest, and the nature and extent of that interest;

(c) rights or options of the director or of the director and some other person or other persons in respect of the acquisition or disposal of shares in or debentures of the company or of a corporation that is related to the company; and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in, or debentures of, the company or of a corporation that is related to the company.

(2) A company need not show in its register the particulars of shares in a corporation that is related to the company and is a wholly-owned subsidiary of the company or of some other corporation.

(3) A company that is a wholly-owned subsidiary of some other company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) A company shall, within 7 days after receiving notice from a director under paragraph 292(1) (a), enter in its register in relation to the director the particulars referred to in subsection (1), including the number and description of shares, debentures, rights, options and contracts to which the notice relates and, in respect of shares, debentures, rights or options acquired or contracts entered into after he became a director —

(a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section; and

(b) the date of —

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(5) A company shall, within 3 days after receiving a notice from a director under paragraph 292(1) (b), enter in its register the particulars of the change referred to in the notice.

(6) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of, or to be upon inquiry as to, the right of a person to or in relation to a share in or debenture of the company.

(7) A register kept by a company pursuant to this section shall be open for inspection —

(a) by a member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(8) A person may request a company to furnish him with a copy of the register or of a part of the register and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar approves; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as the Registrar approves.

(9) A company shall produce its register kept pursuant to this section at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(10) It is a defence to a prosecution for failing to comply with subsection (1) or (4) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 292 with respect to those particulars.

(11) In determining for the purposes of this section whether a person has a relevant interest in a debenture, the provisions of section 27 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture.

(12) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

General duty to make disclosure

292. (1) A director of a company shall give notice in writing to the company —

(a) of such particulars relating to shares, debentures, rights, options and contracts as are necessary for the purposes of compliance by the company with the provisions of this Division;

(b) of particulars of a change in respect of the particulars referred to in paragraph (a), including the consideration (if any) received as a result of the event giving rise to the change;

(c) of such matters and events affecting or relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of section 298 that are applicable in relation to him; and

(d) of his date and place of birth.

(2) A director required to give a notice under subsection (1) shall give the notice —

(a) in the case of a notice under paragraph (1)(a), within 14 days after —

(i) the date on which he became a director; or

(ii) as the case requires, the date on which he became aware that he had a relevant interest in the shares or debentures, the date on which he became aware that he had acquired the rights or options or the date on which he entered into the contracts,

whichever is the later date;

(b) in the case of a notice under paragraph (1)(b), within 14 days after the date on which he became aware of the occurrence of the event giving rise to the change referred to in that paragraph;

(c) in the case of a notice under paragraph (1)(c), within 14 days after the date on which he became aware of the matter or the occurrence of the event; and

(d) in the case of a notice under paragraph (1)(d), within 14 days after the date on which he became a director.

(3) This section does not require a director to give notice of a matter or event of which he has given notice to the company before the commencement of this Act under the repealed laws.

(4) A company shall, within 7 days after the receipt by it of a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

(5) A person who is the principal executive officer, or a secretary, of a company shall give notice in writing to the company —

(a) of such matters and events affecting or relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of section 298 that are applicable in relation to him; and

(b) of his date and place of birth.

(6) A person required to give a notice under subsection (5) shall give the notice —

(a) in the case of a notice under paragraph (5)(a) - within 14 days after the date on which he became aware of the matter or the occurrence of the event; and

(b) in the case of a notice under paragraph (5)(b) - within 14 days after the date on which he became the principal executive officer, or a secretary, as the case may be, of the company.

(7) In a proceeding under this section, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being an employee or agent having duties or acting in relation to his employer’s or principal's interest or interests in a share in, or a debenture of, the company concerned, was aware at that time.

(8) In determining for the purposes of this section whether a person has a relevant interest in a debenture, the provisions of section 27 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture.

Penalty: 10 penalty units or imprisonment or both.

Payments for loss of, or retirement from, office

293. (1) It is unlawful —

(a) for a company, or for a prescribed superannuation fund in relation to a company, to give a prescribed benefit to a person in connection with the retirement of a person from a prescribed office in relation to the company;

(b) for an associate of a company to give a prescribed benefit to a person in connection with the retirement of a person (other than the associate) from a prescribed office in relation to the company; or

(c) for a person to give a prescribed benefit to a prescribed person in connection with the transfer of the whole or part of the undertaking or property of a company,

unless —

(d) particulars with respect to the proposed benefit, including —

(i) in the case of a proposed benefit that is a payment - the amount of the payment; or

(ii) in any other case - the money value of the proposed benefit; and

(e) in a case where paragraph (a) or (b) applies - particulars of all other relevant benefits given or proposed to be given,

have been disclosed to the members of the company and the giving of the proposed benefit has been approved by the company in general meeting.

(2) Paragraph (1)(a) or (b) does not apply in relation to —

(a) the giving of an exempt benefit; or

(b) the giving of a benefit in prescribed circumstances.

(3) Paragraph (1)(a) or (b) does not apply in relation to the giving of a benefit in connection with the retirement of a person (in this subsection referred to as “the relevant person” from a prescribed office (in this subsection referred to as "the relevant office” in relation to a company, if —

(a) the benefit is a payment made in good faith by way of pension or lump sum payment in respect of past services rendered by the relevant person to the company or to a related corporation, including a superannuation, retiring allowance, superannuation gratuity or similar payment; and

(b) the value of the pension or lump sum payment (excluding any part of the pension or lump sum payment that is attributable to contributions made by the relevant person or by a person other than the company or an associate of the company) when added to the value of all other pensions (if any) and lump sum payments (if any) already paid or payable in connection with the retirement of the relevant person from a prescribed office in relation to the company (excluding any part of those other pensions or lump sum payments that is so attributable) does not exceed —

(i) in a case where, at the time when the relevant person retired from the relevant office, the relevant person was, and had been throughout a period (in this subsection referred to as "the relevant period"), or throughout periods totalling a period (in this subsection also referred to as "the relevant period"), of not less than 3 years, an executive officer of the company or of a related corporation - the amount ascertained in accordance with the formula —

$$\frac{AB}{3}$$

where —

A is the total emoluments of the relevant person during the period of 3 years ending when the relevant person retired from the relevant office and B is 7 or the number of years in the relevant period, whichever is the less; or

(ii) in any other case - the total emoluments of the relevant person during the period of 3 years ending when the relevant person retired from the relevant office.

(4) Paragraph (1)(a) or (b) does not apply in relation to the giving of a benefit by a person to another person if failure by the first-mentioned person to give the benefit to the other person would constitute, otherwise than by reason of breach of contract or breach of trust, a failure to comply with a law in force in Norfolk Island or elsewhere.

(5) Where the giving of a prescribed benefit by a person to another person is unlawful by virtue of subsection (1), the receipt of the benefit by the other person is also unlawful.

(6) A person (other than a superannuation fund) who does an act that is unlawful by virtue of subsection (1) or (5) is guilty of an offence.

(7) Where a superannuation fund does an act that is unlawful by virtue of subsection (1) or (5), a person who is in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the doing of the act, is guilty of an offence.

(8) Where the giving of a benefit to a person is unlawful by virtue of subsection (1), then —

(a) where the benefit is a payment - the amount of the payment; or

(b) in any other case - the money value of the benefit, shall be deemed to be received by the person in trust for the company concerned.

(9) This section is in addition to, and does not affect the operation of, any other law that requires disclosure to be made with respect to the giving or receipt of a prescribed benefit.

(10) In this section —

(a) a reference to a prescribed office, in relation to a company, is a reference to —

(i) an office of director of the company or of a related corporation;

(ii) an office of principal executive officer of the company or of a related corporation; and

(iii) any other office in connection with the management of affairs of the company or of a related corporation that is held by a person who also holds, or has, at any time within the period of 12 months immediately preceding the loss of, or retirement from, that office, held, an office mentioned in subparagraph (i) or (ii);

(b) a reference to a prescribed person, in relation to a company, is a reference to —

(i) a person who holds, or has at some previous time held, a prescribed office in relation to the company;

(ii) the spouse of a person referred to in subparagraph (i);

(iii) a person who is a relative of a person referred to in subparagraph (i) or of the spouse of such a person; or

(iv) a person associated with a person referred to in subparagraph (i) or the spouse of a person associated with a person referred to in subparagraph (i);

(c) a reference to the making of a payment or the giving of other valuable consideration or benefit by a company or person includes a reference to the making of a payment or the giving of other valuable consideration or benefit that the company or person is obliged under a contract to make or give;

(d) a reference to the giving of a prescribed benefit by a person includes a reference to the giving of a prescribed benefit that the person is obliged under a contract to give;

(e) a reference to the giving of a prescribed benefit, or to a pension or lump sum payment paid or payable in connection with the retirement of a person from an office, is a reference to the giving of a prescribed benefit, or to a pension or lump sum paid or payable, as the case may be;

(f) a reference to a payment includes a reference to a payment by way of damages for breach of contract; and

(g) a reference to the retirement of a person from an office includes a reference to the loss by the person of the office.

(11) Without limiting the generality of paragraph (10)(e), where a person gives a prescribed benefit to some other person for the purpose, or for purposes including the purpose, of enabling or assisting a person to give to a person a prescribed benefit in connection with the retirement of a person (in this subsection referred to as "the relevant person") from an office, the first-mentioned person shall be taken, for the purposes of this section, to give the first-mentioned prescribed benefit in connection with the retirement of the relevant person from that office.

(12) Where a company, or an associate of a company, gives a prescribed benefit to a superannuation fund in prescribed circumstances, the superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

(13) Where a prescribed superannuation fund in relation to a company gives a prescribed benefit to some other superannuation fund in prescribed circumstances, the other superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

(14) For the purposes of this section, where —

(a) a company, or an associate of a company, gives a prescribed benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to the company; or

(b) a superannuation fund gives a prescribed benefit to some other superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company,

the prescribed benefit first referred to in paragraph (a) or (b) shall be taken to be given in prescribed circumstances.

(15) In this section —

"emoluments", in relation to a person who is a director or other office of a corporation, means the amount or value of any money, consideration or benefit given, directly or indirectly, to that person in connection with the management of affairs of the corporation or of a holding company or subsidiary of the corporation, whether as a director or officer or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the corporation;

"executive officer" in relation to a corporation, means —

(a) a person, by whatever name called, who is concerned, or takes part, in the management of the corporation otherwise than in a capacity as director of the corporation; or

(b) a person who is a secretary of the corporation,

whether or not the person is a director of the corporation;

"exempt benefit" means a prescribed benefit given in connection with the retirement of a person from a prescribed office in relation to a company, being a benefit —

(a) given under an agreement entered into after the commencement of this Act, where the giving of the prescribed benefit would have been lawful if this Act had not been enacted;

(b) given under an agreement where particulars of the terms of that agreement have been disclosed to the members of the company and approved by the company in general meeting;

(c) that is a payment made in good faith by way of damages for breach of contract;

(d) given to the person pursuant to an agreement made between the company and the person before the person became the holder of the prescribed office as the consideration or part of the consideration for the person agreeing to hold the prescribed office; or

(e) that is a payment made in respect of leave of absence to which the person is entitled by virtue of an industrial instrument;

"give", in relation to a prescribed benefit, includes —

(a) in the case of a prescribed benefit that is a payment - make; and

(b) in the case of a prescribed benefit that is an interest in property - transfer;

"person" includes a superannuation fund;

"prescribed benefit" means a payment or other valuable consideration or other benefit and includes, without limiting the generality of the foregoing, an interest in property;

"relevant benefit" in relation to a proposal to give a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company, being a benefit in relation to which paragraph (1)(a) or (b) would apply, means any other prescribed benefit (including an exempt benefit) given, or proposed to be given in connection with the retirement of the person from the prescribed office;

"superannuation fund" means a provident, benefit, superannuation or retirement fund.

(16) The giving of approval by a company for the giving of a prescribed benefit as mentioned in paragraph (1)(c) does not relieve a director of the company of any duty to the company under this Act or otherwise, whether of a fiduciary nature or not, in connection with the giving of the prescribed benefit.

Penalty: 25 penalty units or imprisonment or both.

Provisions as to assignment of office

294. (1) If, in the case of a public company, provision is made by the articles or by an agreement entered into between a person and the company for empowering a director of the company to assign his office as director to some other person, such an assignment of office, notwithstanding anything in the provision of the articles or agreement, does not have effect until approved by a special resolution of the company.

(2) This section does not prevent the appointment by a director (if authorised by the articles and subject to the articles) of a person to act for or on behalf of the director during his inability for any time to act as director.

Disclosure of directors' emoluments

295. (1) If a company is served with a notice sent by or on behalf of —

(a) at least 10% of the number of members of the company; or

(b) the holders in aggregate of not less than 5% in the nominal value of the company's issued share capital,

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company shall —

(c) forthwith prepare or cause to be prepared and cause to be audited a statement showing the amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary, including any amount paid by way of salary, during the financial year immediately preceding the service of the notice;

(d) when the statement has been audited, forthwith send a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(e) lay the statement before the next general meeting of the company held after the statement is audited.

(2) If a company fails to comply with any provision of this section, the company and the directors of the company are each guilty of an offence.

Company secretaries

296. (1) A company shall have at least one secretary.

(2) A secretary of a company shall be appointed by the directors.

(3) A person is not capable of being a secretary of a company unless the person is a natural person who has attained the age of 18 years.

(4) The secretary, or one of the secretaries, shall be a person who ordinarily resides in Norfolk Island.

(5) A secretary who ordinarily resides in Norfolk Island shall be present at the registered office of the company in person or by his agent on the days and during the hours when the registered office is required to be open and accessible to the public.

(6) If there is no secretary of a company, or no secretary of the company is capable of acting, an act or thing required or authorised to be done by or in relation to the secretary may be done by or in relation to an officer of the company authorised by the directors to act as secretary, either generally or in relation to the doing of that act or thing.

(7) A provision of this Act or of the memorandum or articles requiring or authorising an act or thing to be done by or in relation to a director and a secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, a secretary.

(8) If default is made in complying with a provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

Indemnification of officers and auditors

297. (1) A provision, whether contained in the articles or in a contract with a company or otherwise, for exempting an officer or auditor of the company from, or indemnifying him against, a liability that by law would otherwise attach to him in respect of negligence, default, breach of duty or breach of trust of which he is guilty in relation to the company is void.

(2) Notwithstanding anything in this section, a company may, pursuant to its articles or otherwise, indemnify an officer or auditor against liability incurred by him in defending proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with an application in relation to any such proceedings in which relief is under this Act granted to him by the Court.

(3) Subsection (1) does not apply in relation to a contract of insurance, not being a contract of insurance the premiums in respect of which are paid by the company or by a related corporation.

(4) In this section, "officer", in relation to a company means —

(a) a director, secretary, executive officer or employee of the company;

(b) a receiver or a manager of the property or of part of the property of the company;

(c) an official manager or deputy official manager of the company;

(d) a liquidator of the company; or

(e) a trustee or other person administering a compromise or arrangement made between the company and some other person or persons.

Register of directors, principal executive officers and secretaries

298. (1) A company shall keep a register of its directors, principal executive officers and secretaries.

(2) The register shall contain with respect to each director his consent in writing to appointment as director and shall specify —

(a) his present Christian or given name and surname, his date and place of birth, any former Christian or given name or surname, his usual residential address and his occupation (if any); and

(b) particulars of directorships held by the director in any other corporation that under the law of Norfolk Island or of the place where the corporation was formed is a public company or a subsidiary of a public company.

(3) It is not necessary for the register to contain particulars of directorships held by a director of a corporation in a related corporation.

(4) Where a person is a director of one or more subsidiaries of the same holding company, it is sufficient compliance with subsection (2) if it is shown that the person is the holder of one or more directorships in that group of companies and the group is described by the name of the holding company with the addition of the word "Group".

(5) The register shall specify with respect to each principal executive officer and secretary his full name, date and place of birth, address and other occupation (if any) and shall contain his consent in writing to his appointment as principal executive officer or secretary, as the case may be.

(6) The register shall be open for inspection —

(a) by a member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires, or where the company does not require the payment of an amount, without charge.

(7) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar approves; or

(b) in a case to which paragraph (a) does not apply within 21 days after the request is made or within such longer period as the Registrar approves.

Returns by companies

299. A company shall lodge with the Registrar —

(a) within one month after incorporation - a return containing the particulars required to be specified in the register- kept under section 298;

(b) within one month after a person ceases to be, or becomes, a director of the company - a return notifying the Registrar of the change and containing, with respect to each person who is, at the time of lodgement of the return, a director of the company, the particulars required to be specified in the register kept under section 298;

(c) within one month after a person becomes a principal executive officer or secretary of the company - a return notifying the Registrar of that fact and specifying the full name, address, date and place of birth and other occupation (if any) of that person; and

(d) within one month after a person ceases to be a principal executive officer or secretary of the company - a return notifying the Registrar of that fact.

Offences

300. If default is made in complying with any of the provisions of sections 298 or 299, the company and any officer of the company who is in default are each guilty of an offence.

Registrar may require certain notices

301. (1) The Registrar may at any time, by notice in writing given to a person who appears to the Registrar from a return lodged with the Registrar under this Division or with the Registrar of Companies under a corresponding provision of the repealed laws, to be a director, principal executive officer or secretary of a company, require the person to lodge with the Registrar, within a period specified in the notice, a notice stating whether the person is such a director, principal executive officer or secretary and, if the person has ceased to be such a director, principal executive officer or secretary, specifying the date on which he so ceased.

(2) Where a person receives such a notice the person shall comply with the notice.

Registrar's certificates

302. (1) A certificate of the Registrar stating that, from a return or notice lodged with the Registrar under this Division or lodged with the Registrar of Companies under a corresponding provision of the repealed laws, it appears that, at a time specified in the certificate, or throughout a period specified in the certificate, a person was a director, principal executive officer or secretary of a specified company shall, in all courts and by all persons having power to take evidence for the purposes of this Act, be received as evidence of the facts stated in the certificate.

(2) For the purposes of subsection (1), a person who appears from a return or notice lodged as mentioned in that subsection to be a director, principal executive officer or secretary of a company shall be deemed to continue as such until, from a return or notice subsequently lodged, it appears that he ceased to be such a director, principal executive officer or secretary.

Register of disqualified company directors and other officers

303. (1) The Registrar shall cause to be kept a Register of persons subject to a restriction, consisting of the instrument by virtue of which each such person became a person subject to a restriction.

(2) A person may inspect and take copies of the Register.

Division 3 — Meetings and Proceedings

Statutory meeting and statutory report

304. (1) Where a public company that is a limited company and has a share capital —

(a) issues a prospectus inviting applications or offers from the public to subscribe for, or offering to the public for subscription, shares in the company; and

(b) the company has not previously issued such a prospectus,

the company shall, within a period of not less than one month and not more that 3 months after the date on which the company allots shares pursuant to the prospectus, hold a general meeting of the members of the company, called "the statutory meeting".

(2) The directors shall at least 7 days before the day on which the statutory meeting is to be held send a copy of a report, called "the statutory report", to each member of the company.

(3) The statutory report shall be certified by not less than 2 directors of the company and shall state, as at the date of the report —

(a) the total number of shares allotted, distinguishing —

(i) shares allotted as fully paid up in cash;

(ii) shares allotted as partly paid up in cash;

(iii) shares allotted as fully paid up otherwise than in cash; and

(iv) shares allotted as partly paid up otherwise than in cash,

and stating —

(v) in respect of shares partly paid up - the extent to which they are so paid up; and

(vi) in respect of shares allotted as fully or partly paid up otherwise than in cash - the consideration for which they have been allotted;

(b) the amount of cash received by the company in respect of all the shares allotted and so distinguished;

(c) an abstract of the receipts of the company and of the payments made out of those receipts up to a date within 10 days before the date of the report showing under distinctive headings the receipts from shares and debentures and other sources, the payments made out of those receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;

(d) the names, addresses and descriptions of the directors, trustees for the holders of debentures (if any), auditors (if any), principal executive officers and secretaries of the company; and

(e) the particulars of a contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report, shall, so far as it relates to the shares allotted and to the cash received in respect of those shares and to the receipts and payments on capital account, be examined and reported upon by the auditors (if any).

(5) The directors shall cause a copy of the statutory report and the auditor's report (if any) to be lodged with the Registrar at least 5 days before the date of the statutory meeting.

(6) The directors shall cause a list showing the names and addresses of the members, and the numbers of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member during the continuance of the meeting.

(7) The members present at the meeting may discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but a resolution shall not be passed unless notice of the resolution has been given in accordance with the articles.

(8) The meeting may adjourn from time to time and, at an adjourned meeting, a resolution of which notice has been given in accordance with the articles either before or after the former meeting may be passed.

(9) An adjourned meeting has the same powers as an original meeting.

(10) The meeting may by resolution appoint a committee or committees of inquiry.

(11) At an adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Act, at least 7 days notice of intention to propose the resolution has been given to each member of the company.

(12) In the event of default in complying with the provisions of this section, an officer of the company who is in default and any director of the company who fails to take all reasonable steps to secure compliance with the provisions of this section are each guilty of an offence.

Annual general meeting

305. (1) Subject to subsection (2), a company shall, in addition to any other meeting held by the company, hold a general meeting, called the "annual general meeting", at least once in every calendar year and, in relation to a financial year of the company that ends after the commencement of this Act, within the period of 5 months after the end of that financial year.

(2) A company may hold its first annual general meeting at any time within the period of 18 months after its incorporation but, where the first financial year of the company ends after the commencement of this Act, the company shall hold the meeting not more than 5 months after the end of that financial year.

(3) A company shall be deemed to have held an annual general meeting if that company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but this subsection does not affect an obligation under this Act to hold an annual general meeting at a particular time or within a particular period.

(4) An exempt proprietary company shall be deemed to have held an annual general meeting if that company is to be deemed to have held a general meeting and the resolution that is to be deemed to have been passed at that general meeting deals with all matters that are required to be dealt with at an annual general meeting.

(5) The Registrar may, on application made by a company in accordance with a resolution of the directors and signed by a director or secretary, subject to such conditions as the Registrar thinks fit —

(a) extend the period of 5 months referred to in subsection (1) or the period of 18 months referred to in subsection (2); or

(b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) to be held.

(6) A company is not in default in holding an annual general meeting under subsection (1) or (2) if, pursuant to an extension or permission under subsection (5), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) or (2), as the case may be, to be held, but is held within the extended period or in the calendar year in which under subsection (5) it is permitted to be held.

(7) An application by a company for an extension of a period or for permission under subsection (5) shall be made before the expiration of that period or of the calendar year in which the annual general meeting would otherwise be required to be held.

(8) Subject to notice being given to each person entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that a meeting held or convened to be held shall be the annual general meeting of the company.

(9) If default is made in holding an annual meeting under this section or in complying with any condition imposed by the Registrar under subsection (5) —

(a) the company and any officer of the company who is in default are each guilty of an offence; and

(b) the Court may, on the application of any member, order a general meeting to be convened.

Penalty: 10 penalty units or imprisonment or both.

Convening of general meeting on requisition

306. (1) The directors of a company shall, notwithstanding anything in it articles, on the requisition in writing —

(a) in the case of a company having a share capital - of not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than $200;

(b) in the case of a company not having a share capital - of not less than 200 members; or

(c) in either case - of a member who is entitled, or members who are together entitled, to not less than 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings,

forthwith convene a general meeting of the company to be held as soon as practicable but, in any case, not later than 2 months after the date of the deposit and the requisition.

(2) The requisition —

(a) shall state the objects of the meeting,

(b) shall be signed by the requisitioning member or members;

(c) shall be deposited at the registered office of the company; and,

(d) where there are 2 or more requisitioning members, may consist of several documents in like form each signed by one or more of the requisitioning members.

(3) If the directors do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitioning member, or, where there are 2 or more requisitioning members, those members or any of them representing more than 50% of the total voting rights of all of them —

(a) may, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting; and

(b) for the purposes of convening a meeting as provided by paragraph (a), may request the company to supply a written statement setting out the names and addresses (so far as they are known to the company) of the persons who, at the date of the deposit of the requisition, were entitled, under subsection 307(4) or a provision of the articles of the company, to receive notice of general meetings of the company.

(4) Where a request for a statement is made to a company under paragraph (3)(b), the directors of the company shall send the statement to the person or persons who requested the statement within 7 days after the date on which the request is made.

(5) A meeting convened by a requisitioning member or requisitioning members in accordance with subsection (3) shall not be held more than 3 months after the date of the deposit of the requisition.

(6) The reasonable expenses incurred by the requisitioning member or members by reason of the failure of the directors to convene a meeting shall be paid to those members of the company.

(7) A sum so paid shall be retained by that member or by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(8) 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 of the meeting as is required by this Act in the case of a meeting at which a special resolution is to be proposed.

Convening of meetings

307. (1) In so far as the articles do not make other provision, 2 or more members holding not less than 5% of the issued share capital, or, if the company does not have a share capital, not less than 5% in number of the members of the company, may convene a meeting of the company.

(2) A meeting of a company or of the members included in a class of members, other than a meeting for the passing of a special resolution, shall be convened by notice in writing given at least 14 days before the meeting, or, if a longer period is provided by the articles, in accordance with the articles.

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

(a) in the case of a meeting convened as the annual general meeting - by all the members entitled to attend and vote at the meeting; or

(b) in any other case - by a majority in number of the members having a right to attend and vote at the meeting, being a majority that together hold not less than 95% in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, are together entitled to not less than 95% of the total voting rights of all the members having the right to attend and vote at the meeting.

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

Articles as to right to demand a poll

308. (1) A provision contained in a company's articles is void in so far as it would have the effect —

(a) of excluding the right to demand a poll at a general meeting on a question or matter not being the election of the chairman of the meeting or the adjournment of the meeting;

(b) of making ineffective a demand for a poll on a question or matter, not being the election of the chairman of the meeting or the adjournment of the meeting, that is made —

(i) by not less than 5 members having the right to vote at the meeting;

(ii) by a member or members who are together entitled to not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right; or

(c) of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or by some other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company confers authority to demand or join in demanding a poll, and, for the purposes of subsection (l), a demand by a person as proxy for a member of the company has the same effect as has a demand by the member.

Quorum, chairman, voting etc, at meetings

309. (1) This section has effect subject to the rules.

(2) In the case of a proprietary company, 2 members of the company, and in the case of any other company, 3 members, personally present constitute a quorum.

(3) A member elected by the members present at a meeting may be chairman of the meeting.

(4) In the case of a company having a share capital, each member has one vote in respect of each share or each $20 of stock held by him, and, in any other case, each member has one vote.

(5) On a poll taken at a meeting, a person (including a proxy) 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.

(6) A body corporate 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 the members included in a class of members; or

(b) if it is a creditor (including a holder of debentures) 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 creditors of the company,

(7) A person so authorised is, in accordance with his authority and until his authority is revoked by the body corporate, entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a natural person who was a member, creditor or holder of debentures of the company.

(8) Where —

(a) a person present at a meeting is authorised to act as the representative of a body corporate at the meeting by virtue of an authority given by the body corporate under subsection (6); and

(b) the person is not otherwise entitled to be present at the meeting,

the body corporate shall, for the purposes of subsection (2), be deemed to be personally present at the meeting.

(9) A certificate under the seal of the body corporate is evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (6).

(10) Where a holding company holds the whole of the issued shares in a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (6) stating that an act, matter or thing, or an ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at a general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at a general meeting of the subsidiary.

(11) Where —

(a) by or under any provision of this Act a notice, copy of a resolution or other document relating to a matter is required to be lodged by the company with the Registrar;

(b) a minute referred to in subsection (10) is signed by the representative pursuant to that subsection; and

(c) the minute relates to such a matter,

the company shall, within one month after the signing of the minute, lodge a copy of the minute with the Registrar.

Proxies

310. (1) A member of a company who is entitled to attend and vote at a meeting of the company, or at a meeting of the members included in a class of members of the company, is entitled to appoint —

(a) in the case of a company not having a share capital - a member or, where the articles so provide, a person who is not a member; or

(b) in any other case - not more than 2 other persons (whether members or not),

as his proxy or proxies to attend and vote instead of the member at the meeting.

(2) A proxy so appointed has the same right as has the member to speak at the meeting but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

(3) Where a member appoints 2 proxies, the appointment is of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.

(4) A member of a proprietary company is not entitled to appoint another person as his proxy except —

(a) in accordance with the articles; or

(b) with the leave of the Court.

(5) In each notice convening a meeting of a public company or of the members included in a class of members of a public company, there shall appear with reasonable prominence —

(a) in the case of a public company having a share capital, a statement —

(i) that a member entitled to attend and vote is entitled to appoint one or 2 proxies;

(ii) that where 2 proxies are appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights; and

(iii) that a proxy need not be a member; or

(b) in the case of a public company not having a share capital, a statement —

(i) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member; and

(ii) that a proxy must, or need not, be a member, as the case requires.

(6) If default is made in complying with subsection (5), each officer of the company who is in default is guilty of an offence.

(7) A person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy is guilty of an offence.

(8) A person is not guilty of an offence under subsection (7) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to each member entitled to vote at the meeting by proxy.

Power of Court to order meeting

311. (1) If for any reason it is impracticable to convene a meeting in a manner in which meetings may be convened or to conduct the meeting in the manner prescribed by the articles or by this Act, the Court may, either of its own motion or on the application of a director or member who would be entitled to vote at the meeting, order a meeting to be convened, held and conducted in such manner as the Court orders, and may give such ancillary or consequential directions as it orders, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

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

(3) For the purposes of an application to the Court or of a meeting held by order of the Court under this section, the personal representative of a deceased member of a company shall be deemed to be a member of the company and, notwithstanding anything to the contrary in this Act or in the memorandum or articles of the company, to have the same voting rights as the deceased member had immediately before his death by reason of his holding shares that on his death were transmitted to his personal representative by operation of law.

Circulation of members' resolutions, etc

312. (1) Subject to this section, a company shall, on the requisition in writing —

(a) in the case of a company having a share capital - of not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than $200;

(b) in the case of a company not having a share capital - of not less than 200 members; or

(c) in either case - of a member who is entitled, or members who are together entitled, to not less than 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings,

and, unless the company otherwise resolves, at the expense of the requisitioning member or members —

(d) give to members of the company entitled to have notice of the next annual general meeting sent to them notice of a resolution that may properly be moved and is intended to be moved at that meeting; and

(e) circulate to members of the company entitled to have notice of a general meeting sent to them a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or business to be dealt with at that meeting.

(2) Notice of a resolution referred to in subsection (1) shall be given, and a statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member.

(3) Notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution.

(4) The copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting but, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable after that time.

(5) A company is not required by this section to give notice of a resolution or to circulate a statement unless —

(a) a copy of the requisition signed by the requisitionist or requisitionists is (or, where there are 2 or more requisitionists, 2 or more copies that between them contain the signatures of all the requisitionists are) deposited at the registered office of the company —

(i) in the case of a requisition requiring notice of a resolution - not less than 6 weeks before the meeting; and

(ii) in any other case - not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to the requisition.

(6) If, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy, although not deposited within the time required by subsection (5), shall be deemed to have been properly deposited.

(7) A company is not required by this section to circulate a statement if, on the application either of the company or of some person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are not being exercised in good faith.

(8) The Court may order costs of the company or of another person on an application under this section to be paid by the requisitionist or requisitionists notwithstanding that he is not a party, or they are not parties, to the application.

(9) Notwithstanding anything in the company's articles, the business that may be dealt with at an annual general meeting includes a resolution of which notice has been given in accordance with this section, and, for the purposes of this subsection, notice shall be deemed to have been so given notwithstanding the accidental omission to give notice to a member or members.

(10) If default is made in complying with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

Special resolutions

313. **(1)** A resolution is a special resolution of a company if —

(a) it is passed at a meeting of the company, being a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of not less than three-quarters of the members of the company who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(2) A resolution is a special resolution of the holders of shares in a company included in a class of shares if —

(a) it is passed at a meeting of the holders of shares included in that class of shares, being a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of not less than three-quarters of the holders of shares included in that class of shares who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at the meeting.

(3) A resolution is a special resolution of the members of a company included in a class of members if —

(a) it is passed at a meeting of members included in that class of members, being a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of not less than three-quarters of the members included in that class of members who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(4) If it is so agreed by a majority in number of the members having the right to attend and vote at a meeting of which less than 21 days' notice has been given, being a majority that together hold not less than 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represent not less than 95% of the total voting rights of all members having the right to attend and vote at the meeting, a resolution may be proposed and passed as a special resolution at the meeting.

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

(6) At a meeting which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded —

(a) if the articles make provision permitting a specified number of members for the time being entitled under the articles to vote at the meeting to demand a poll —

(i) where the number specified does not exceed 5 - by that number of members so entitled; or

(ii) in any other case - by 5 members so entitled; or

(b) if no such provision is made by the articles —

(i) where the company has a share capital - by 3 members entitled to vote at the meeting, or by one member or 2 members so entitled if that member holds or those 2 members together hold not less than 10% in nominal value of the shares giving the right to attend and vote at the meeting; or

(ii) where the company does not have a share capital - if that member is entitled, or those 2 members together are entitled, to not less than 10% of the total voting rights of all members having the right to attend and vote at the meeting.

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

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

(9) Where, in the case of a company incorporated under the repealed laws, a matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

Resolutions requiring special notice

314. (1) Where by this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move the resolution has been given to the company not less than 28 days before the meeting at which it is moved.

(2) If, after notice of the intention to move such a resolution has been given to the company, a meeting is convened for a date 28 days or less after the notice was given, the notice, although not given to the company within the time required by this section, shall be deemed to have been properly given.

(3) The company shall give persons entitled to be given notice of a meeting of the company notice of such a 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 of the resolution in any manner allowed by the articles, not less than 14 days before the meeting.

Resolutions of exempt proprietary companies

315. (1) If all the members of an exempt proprietary company have signed a document containing a statement that they are in favour of a prescribed resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a general meeting of the company held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member.

(2) Where a document is so signed —

(a) the company shall be deemed to have held a general meeting at that time on that day; and

(b) the document shall be deemed to constitute a minute of that meeting.

(3) Subsection (1) does not apply in relation to a document unless the document was signed by each person who was a member of the company at the time when the document was last signed.

(4) For the purposes of this section —

(a) 2 or more separate documents containing statements in identical terms each of which is signed by one or more members shall together be deemed to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents; and

(b) a prescribed resolution is a resolution that is required or permitted by this Act or the memorandum or articles to be passed at a general meeting of a company and includes a resolution appointing an officer or auditor or approving or agreeing to an act, matter or thing but does not include a resolution of which special notice is required or that is required to be passed by a majority other than a simple majority.

(5) A document that is attached to a document signed as mentioned in subsection (1) and is signed by the member or members who signed the last-mentioned document shall, for the purposes of this Act, be deemed to have been laid before the company at the general meeting referred to in that subsection.

(6) This section does not affect the operation of a law relating to the effectiveness of the assent of members of a company given to a document or to an act, matter or thing, otherwise than at a general meeting of the company.

Lodgment with the Registrar of copies of certain resolutions and agreements

316. (1) A printed copy of —

(a) a special resolution;

(b) a resolution or agreement that binds shareholders included in a class of shareholders, whether agreed to by all the members of that class or not; and

(c) a document or resolution that attaches rights to shares (whether or not in substitution for other rights) and is not otherwise required to be lodged with the Registrar under this Act,

shall, except as otherwise provided by this Act, within one month after the passing of the resolution or the making of the agreement or document, be lodged by the company with the Registrar.

(2) Where articles have not been registered, a member may request the company to furnish him with a printed copy of a resolution, document or agreement to which this section applies and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as the Registrar allows.

(3) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Resolutions at adjourned meetings

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

Minutes of proceedings

318. (1) A company shall —

(a) cause minutes of all proceedings of a general meeting and of a meeting of its directors to be entered, within one month after the relevant meeting is held, in a book kept for that purpose; and

(b) except in the case of documents that are to be deemed to constitute minutes by virtue of section 315, cause those minutes to be signed by the chairman of the meeting or by the chairman of the next succeeding meeting.

(2) A minute that is so entered or, in a case to which paragraph (1)(b) applies, purports to be signed as provided by that paragraph is evidence of the proceedings to which it relates.

(3) Where minutes have been so entered or, in a case to which paragraph (l)(b) applies, signed, then, unless the contrary is proved —

(a) the meeting shall be deemed to have been duly held and convened;

(b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and

(c) all appointments that are recorded in the minutes as having been made at the meeting shall be deemed to have been duly made.

(4) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Inspection of minute books

319. (1) The book containing the minutes of the proceedings of a general meeting or of a meeting of the directors of the company shall be kept by the company at the registered office or principal place of business in Norfolk Island of the company or at such other place as the Registrar allows.

(2) The book containing the minutes of proceedings of a general meeting shall be open for inspection by a member without charge.

(3) A member of a company may request the company in writing to furnish him with a copy of the minutes of a general meeting and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply, - within 21 days after the request is made or within such longer period as the Registrar allows.

(4) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Division 4 — Register of Members

Register and index of members

320. (1) A company shall keep a register of its members and enter in that register —

(a) the names and addresses of the members and, in the case of a company having a share capital, a statement of the shares held by each member (distinguishing each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding) and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date on which the name of a person was entered in the register as a member;

(c) the date on which a person who ceased to be a member during the previous 7 years so ceased to be a member; and

(d) in the case of a company having a share capital - the date of each allotment of shares and the number of shares comprised in the allotment.

(2) Where the company has converted any of its shares into stock and has given notice of the conversion to the Registrar, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in paragraph (1)(a).

(3) A company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to them need not be supplied to a person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4) The register of members is evidence of matters entered in the register as required or authorised by this Act.

(5) A company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days after the date on which an alteration is made in the register, make any necessary alteration of the index.

(6) The index shall, in respect of each member, contain a sufficient indication to enable the particulars with respect to the member in the register to be readily found.

(7) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Closing and inspection of register

321. (1) A company may close the register of members or part of that register for a time or times but so that no part of the register is closed for more than 30 days in the aggregate in a calendar year.

(2) The register of members of a company and the index of members shall be open for inspection —

(a) by a member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(3) A person may request a company to furnish him with a copy of the register or of a part of the register (but only so far as it relates to names, addresses, number of shares held and amounts paid on shares) and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as the Registrar allows.

(4) If default is made in complying with subsection (1) or (2), the company and any officer of the company who is in default are each guilty of an offence.

(5) This section has effect subject to section 325.

Consequences of default by agent

322. Where, by virtue of paragraph 629(1)(b), the register of members is kept at the office of a person other than the company and by reason of a default of that other person, the company fails to comply with section 321 or subsection 629(1) or (4) or with any requirement of this Act as to the production of the register, that other person is liable to the same penalties as those to which he would be liable if he were an officer of the company who was in default, and the power of the Court under section 633 extends to the making of orders against that other person and his officers and servants.

Power of Court to rectify register

323. (1) If —

(a) an entry is omitted from the register;

(b) an entry is made in the register without sufficient cause;

(c) an entry wrongly exists in the register;

(d) there is an error or defect in an entry in the register; or

(e) default is made or unnecessary delay takes place in entering in the register the fact of a person having ceased to be a member,

a person aggrieved, a member of the company or the company may apply to the Court for rectification of the register.

(2) The Court may refuse the application or may order rectification of the register and payment by the company of damages sustained by a party to the application.

(3) On an application under subsection (1), the Court may decide —

(a) a question relating to the right of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between —

(i) a member or alleged member on the one hand and another member or alleged member on the other hand; or

(ii) a member or alleged member on the one hand and the company on the other hand; and

(b) generally any question necessary or expedient to be decided with respect to the rectification of the register.

(4) Where a company is required by this Act to lodge with the Registrar a return containing a list of its members, the Court shall, when making an order for rectification of the register, by its order direct a notice of the rectification to be so lodged.

Personal representative may be registered as owner of shares

324. (1) A personal representative of a deceased person who was registered in a register or branch register kept in Norfolk Island as the holder of a share in a corporation may be registered as the holder of that share as personal representative and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if the share had remained registered in the name of the deceased person but is not subject to any other liabilities in respect of that share.

(2) A personal representative of a deceased person who was entitled in equity to a share in a corporation, being a share registered in a register or branch register kept in Norfolk Island, may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as personal representative and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had been registered in the name of the deceased person but is not subject to any other liabilities in respect of that share.

(3) Where —

(a) a person is appointed under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable (in this subsection referred to as "the incapable person"); and

(b) the incapable person is registered in a register or branch register kept in Norfolk island as the holder of a share in a corporation,

the first-mentioned person may be registered as the holder of that share as administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had remained registered in the name of the incapable person but is not subject to any other liabilities in respect of that share.

(4) Where —

(a) a person is appointed, under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable (in this subsection referred to as "the incapable person"); and

(b) the incapable person is entitled in equity to a share in a corporation, being a share registered in a register or branch register kept in Norfolk Island,

the first-mentioned person may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had been registered in the name of the incapable person but is not subject to any other liabilities in respect of that share.

(5) Shares in a corporation registered in a register or branch register kept in Norfolk Island and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(6) Except as provided by this section or by section 325, notice of a trust, whether express, implied or constructive, shall not be entered on the register or branch register kept in Norfolk Island or be receivable by the Registrar and no liabilities are affected by anything done pursuant to any of the preceding provisions of this section or pursuant to section 325 and the corporation concerned is not affected with notice of any trust by anything so done.

(7) A person who commences to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a corporation shall, within one month after commencing so to hold the shares, serve on the company notice in writing that he so holds the shares.

(8) In this section, a reference to the personal representative of a deceased person includes a reference to the trustee of the estate of a deceased person.

Power of company to obtain information as to beneficial ownership of its shares

325. (1) In this section —

"company" means a public company;

"relevant instructions", in relation to shares, means instructions or directions —

(a) in relation to the acquisition or disposal of the shares;

(b) in relation to the exercise of a voting or other right attached to the shares; or

(c) in connection with some other matter relating to the shares;

"subsection (2) notice", in relation to shares in a company, means a notice in writing addressed to the holder of the shares requiring him to furnish to the company a statement in writing setting out —

(a) full particulars of his relevant interest in the shares and of the circumstances by reason of which he has that interest; and

(b) so far as it lies within his knowledge —

(i) full particulars of the name and address of each other person (if any) who has a relevant interest in any of the shares;

(ii) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and

(iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

"subsection (3) notice", in relation to shares in a company, means a notice in writing addressed to a person requiring him to furnish to the company a statement in writing setting out —

(a) full particulars of a relevant interest that the person has in any of the shares and of the circumstances by reason of which he has that interest; and

(b) so far as it lies within his knowledge —

(i) full particulars of the name and address of each other person (if any) who has a relevant interest in any of the shares;

(ii) full particulars of each such interest, and of the circumstances by reason of which the other person has that interest; and

(iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

(2) A subsection (2) notice in relation to particular voting shares in a company —

(a) may be given to the holder of the shares by the company at any time; and

(b) shall be given to the holder of the shares by the company within 7 days after receiving a notice from —

(i) the Registrar; or

(ii) a member of the company who is entitled, or members of the company who are together entitled, to not less than 5% of the total voting rights of all the members having at the date of the last-mentioned notice a right to vote at general meetings of the company,

requiring the company to give a subsection (2) notice to the holder of the shares.

(3) Where a company receives, pursuant to a subsection (2) notice or a subsection (3) notice given to a person in relation to particular shares in the company, information that —

(a) some other person has a relevant interest in any of the shares; or

(b) some other person has given relevant instructions in relation to any of the shares,

a subsection (3) notice in relation to the first-mentioned shares —

(c) may be given to the other person by the company at any time; and

(d) subject to subsection (4), shall be given to the other person by the company within 7 days after receiving the information, if the information was received pursuant to a notice that was required by paragraph (2)(b) or by this paragraph to be given.

(4) Where —

(a) a company has received a notice from the Registrar or a member or members of the company requiring the company to give a subsection (2) notice to a holder of shares in the company; and

(b) the company receives a notice in writing from the Registrar or from that member or those members, as the case may be, to the effect that the company is no longer required to comply with subsection (3) in relation to those shares,

the company is not required to give a subsection (3) notice or a further subsection (3) notice, as the case requires, in relation to those shares pursuant to the first-mentioned notice.

(5) A person who —

(a) receives a subsection (2) notice or subsection (3) notice in relation to shares in a company; and

(b) believes that there are special reasons why particular information that the notice requires him to furnish to the company should not be so furnished or should be so furnished only in a particular form,

may, within 2 business days after he receives the notice, apply to the Registrar for a certificate under subsection (6).

(6) Where the Registrar is satisfied that there are special reasons why particular information should not be furnished to the company or should be so furnished only in a particular form, the Registrar may give the person a certificate either —

(a) referring to the information and stating that the information need not be furnished to the company; or

(b) referring to the information and stating that the information need only be furnished to the company in a form specified in the certificate,

as the case may be.

(7) A person who receives a subsection (2) notice or a subsection (3) notice shall, unless within 2 business days after the day on which he receives the notice he applies to the Registrar under subsection (5) in relation to particular information that the notice requires him to furnish to the company, comply with the notice within 5 business days after that day.

(8) A person who —

(a) receives a subsection (2) notice or a subsection (3) notice; and

(b) applies to the Registrar under subsection (5) for a certificate in relation to particular information that the notice requires him to furnish,

shall, forthwith after so applying, notify the company that he has so applied, and shall, within 5 business days after receiving notice of the decision of the Registrar in relation to his application —

(c) except in a case to which paragraph (d) applies - comply with the subsection (2) notice or subsection (3) notice, as the case may be; or

(d) if the Registrar has given him a certificate under subsection (6) in relation to some or all of that information, furnish to the company a copy of the certificate together with a statement in writing —

(i) setting out so much of the information required by the subsection (2) notice or subsection (3) notice, as the case may be, as is not referred to in the certificate; and

(ii) if the certificate states that particular information need only be furnished to the company in a specified form - setting out that information in that form.

(9) A company shall keep a register of the information received by it under this section in such form as the Registrar requires.

(10) The register shall be open for inspection —

(a) by a member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(11) A person may request a company to furnish him with a copy of the register or of a part of the register and, where such a request is made, the company shall send the copy to that person —

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as the Registrar allows; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as the Registrar allows.

(12) Information that is required by subsection (10) to be entered in a register shall be so entered by the company within 5 business days after the company receives the information.

(13) If a company fails to comply with subsection (2) or (3) the company and any officer of the company who is in default are each guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(14) A person who fails to comply with subsection (7) or (8) is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(15) If default is made in complying with subsection (9), (10), (11) or (12), the company and any officer of the company who is in default are each guilty of an offence.

(16) If a company fails to comply with subsection (2) or (3) and an officer or officers of the company is or are in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure —

(a) the company; and

(b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to a person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage.

(17) A person who fails to comply with subsection (7) or (8) is liable to pay, to a person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person.

(18) If default is made in complying with subsection (9), (10), (11) or (12) and an officer or officers of the company is or are in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the default —

(a) the company; and

(b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to a person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.

(19) A person —

(a) is not guilty of an offence under subsection (14); and

(b) is not liable to pay damages under subsection (17),

in respect of a failure to furnish to a company information that a subsection (2) notice or a subsection (3) notice in relation to shares in the company required him to furnish to the company, if it is proved that —

(c) at the time when the person received the notice, the information appeared in a register kept by the company pursuant to this Act; or

(d) the giving of the notice was not made in good faith.

Powers of Court

326. (1) Where —

(a) a person has failed to comply with subsection 325 (7) or (8) in relation to a notice given to the person under subsection 325 (2) or (3) in relation to shares in a company (whether or not the failure still continues); or

(b) a person has, in a statement furnished to a company pursuant to a notice given to the person under subsection 325 (2) or (3) in relation to shares in the company, stated that particular information in relation to any of the shares or in relation to a person who —

(i) has a relevant interest in any of the shares; or

(ii) has given in relation to any of the shares relevant instructions within the meaning of section 325,

does not lie within his knowledge,

the Court may, on the application of —

(c) the company; or

(d) if the notice was required by paragraph 325(2)(b) or (3)(d) to be given by the company by reason of a notice received by the company from the Registrar or from a member or members of the company - the Registrar, or that member or those members, as the case may be,

make in relation to any of the shares such order as is just, including, but without limiting the generality of the foregoing, one or more of the orders referred to in subsection (2).

(2) The orders the Court may make under subsection (1) include the following:

(a) an order restraining the holder of the shares from disposing of, or of an interest in, the shares;

(b) an order restraining the exercise of a voting or other right attached to the shares;

(c) an order directing the company not to make payment, or to defer making payment, of a sum due from the company in respect of the shares;

(d) an order directing the disposal of, or of an interest in, the shares;

(e) an order vesting in the Registrar the shares or an interest in the shares;

(f) an order directing the company not to register a transfer or transmission of the shares;

(g) an order that an exercise of the voting or other rights attached to the shares be disregarded;

(h) an order cancelling, or declaring to be voidable, a contract, arrangement or offer relative to the shares;

(j) for the purposes of securing compliance with another order made under this section, an order directing the company or some other person to do or refrain from doing a specified act.

(3) The Court may, if in the opinion of the Court it is just to do so, before considering an application under subsection (1), grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(4) Where the Registrar makes an application under subsection (1), the Court shall not require the Registrar or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

(5) An order under this section may include such ancillary or consequential provisions as the Court thinks just.

(6) Without limiting the nature of the orders that may be made by the Court under subsection (1) directing the disposal of, or of an interest in, a share in a company, such an order may include one or more of the following provisions:

(a) a provision that the disposal shall be made within such time and subject to such conditions (if any) as the Court specifies, including a condition that the disposal shall not be made to a particular person or persons or to persons included in a particular class or classes or persons;

(b) a provision that a person specified in the order is liable to pay to the company an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;

(c) a provision that a person specified in the order shall, for all purposes connected with the disposal of the shares, be deemed to hold the shares as a trustee for the beneficial owner of the shares.

(7) The Court may direct that, where a share, or an interest in a share, is not disposed of in accordance with an order of the Court under this section, the share or interest shall vest in the Registrar.

(8) The Court shall not make an order under this section if it is satisfied that the order would unfairly prejudice a person.

(9) Where a person has failed to comply with subsection 325(7) or (8) in relation to a notice given to the person under subsection 325(2) or (3) in relation to shares in a company, the Court shall not make an order under this section in relation to any of the shares if it is satisfied —

(a) that, at the time when the person received the notice, the information that the notice required him to furnish appeared on a register kept by the company pursuant to this Act; or

(b) that the giving of the notice was not made in good faith.

(10) Where a person has failed to comply with subsection 325(7) or (8) in relation to shares in a company, the Court shall not make an order under this section in relation to any of the shares, other than an order referred to in paragraph (2)(b) or (g), if it is satisfied —

(a) that the failure was due to the person's inadvertence or mistake; and

(b) that, in all the circumstances, the failure ought to be excused.

(11) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(12) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(13) A person who contravenes or fails to comply with an order under this section that is applicable to him is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(14) Where an offence under subsection (13) is committed by a corporation, each officer of the corporation who is in default is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(15) Where a share or an interest in a share vests in the Registrar by virtue of an order under subsection (1) or of a direction under subsection (7) —

(a) the Registrar may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as he sees fit;

(b) the provisions of section 564 (other than subsection (1)) apply in relation to the share or interest as if —

(i) a reference in those provisions to the power of the Registrar under subsection 564(1), or to the power conferred upon the Registrar by subsection 564(1), were a reference to the power conferred on the Registrar by paragraph (a) of this subsection;

(ii) a reference in those provisions to property, or to an estate or interest in property, were a reference to the share or interest; and

(iii) the reference in subsection 564(4) to a power conferred on the Administration by Subdivision F of Division 4 of Part 22 included a reference to the power conferred on the Registrar by paragraph (a) of this subsection; and

(c) sections 564 and 565 apply in relation to the share or interest in like manner as they apply in relation to property vested in the Administration under section 563.

Branch registers

327. (1) A company having a share capital may cause to be kept in a place outside Norfolk Island a branch register of members.

(2) Such a branch register shall be deemed to be part of the company's register of members.

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

(4) A company shall transmit to the place at which its principal register is kept a copy of every entry in a branch register within 28 days after the entry is made and shall cause to be kept at that place, duly entered up from time to time, a duplicate of the branch register and the duplicate shall, for the purposes of this Act, be deemed to be part of the principal register.

(5) Subject to the provisions of this section with respect to the duplicate branch register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register and no transaction with respect to shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(6) A company may discontinue a branch register and thereupon the company shall transfer all entries in that register to the principal register.

PART 14 — ANNUAL RETURNS

Annual return

328. (1) A company shall —

(a) in a case to which paragraph (b) does not apply - within one month after the date of the annual general meeting of the company or, if the annual general meeting is not held within the period within which it is required to be held, within one month after the last day of that period; or

(b) in the case of a company keeping a branch register in a place outside Norfolk Island - within 2 months after the date of the annual general meeting or, if the annual general meeting is not held within the period within which it is required to be held, within 2 months after the last day of that period,

lodge with the Registrar an annual return containing a list of members and such other particulars as are prescribed and accompanied by the prescribed documents.

(2) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Auditor's statement

329. (1) A company that is not required by this Act to lodge accounts with the Registrar shall include in or attach to its annual return under section 328 a statement relating to the accounts of the company required to be laid before the company at its annual general meeting held on the date to which the return is made up or, if an annual general meeting is not held on that date, the annual general meeting last preceding that date, signed by the auditor of the company.

(2) The statement shall specify —

(a) whether the company has, in the opinion of the auditor, kept proper accounting records and other books during the period covered by the accounts;

(b) whether the accounts have been audited in accordance with this Act; and

(c) whether the auditor's report on the accounts was made subject to a qualification, or included any comment made under subsection 357(4), and if so, particulars of the qualification or comment.

(3) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Exemption of certain companies

330. (1) A public company that —

(a) has more than 500 members;

(b) keeps its principal register at a place in Norfolk Island; and

(c) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

need not comply with such of the provisions of this Part and of the regulations as relate to the inclusion in the annual return of a list of members.

(2) A company limited by guarantee that is prohibited from paying a dividend to its members need not comply with such of the provisions of this Part and of the regulations as relate to the inclusion in the annual return of a list of members.

(3) The Registrar may, by notice in writing published in the Gazette, require a company to which subsection (1) or (2) applies to comply with all or any of the provisions of this Part or of the regulations referred to in that subsection.

(4) If default is made in complying with a notice made under subsection (3), the company and any officer of the company who is in default area each guilty of an offence.

PART 15 — INSPECTION OF RECORDS

Inspection of records

331. (1) Where —

(a) a member of a company applies to the Court for an order authorising a registered company auditor, or a legal practitioner acting on behalf of the member, to inspect the records of the company; and

(b) the Court is satisfied that the member is acting in good faith and that the inspection is to be made for a proper purpose,

the Court may —

(c) make an order authorising a registered company auditor or a legal practitioner, acting on behalf of the member, at such time as is specified in the order, to inspect and to make copies of, or take extracts from, the records of the company or of such of the records of the company as are specified in the order; and

(d) make such other order as is just including, without limiting the generality of the foregoing, an order relating to the use that may be made of the information disclosed to the member by the registered company auditor or the legal practitioner as a result of the inspection.

(2) The right of a member of a company to apply for an order under subsection (1) is in addition to and does not affect any right in relation to the inspection of records of the company that the member of a company has apart from this section.

Disclosure of information

332. Where a registered company auditor or a legal practitioner inspects records of a company pursuant to an order under section 331, he shall not disclose to a person other than the member of the company on whose application the order was made information acquired by him in the course of the inspection.

PART 16 — ACCOUNTS AND AUDIT

Division 1 — Preliminary

Interpretation

333. (1) In this Part, unless the contrary intention appears —

"accounts" means profit and loss accounts and balance-sheets and includes —

(a) statements, reports and notes, other than auditors' reports and directors' reports, attached to and intended to be read with a profit and loss account or balance sheet; and

(b) where the directors of a company —

(i) are required by this Part to cause a funds statement relating to a financial year of the company to be made out; or

(ii) not being so required, cause such a funds statement to be made out for the purpose of being laid before the next annual general meeting of the company,

that funds statement;

"approved accounting standard" means an accounting standard that has been approved under the *Companies Act 1981* of the Commonwealth and is in force for the time being;

"current liability", in relation to accounts or group accounts, means a liability that would in the ordinary course of events be payable within 12 months after the end of the financial year to which the accounts or group accounts relate;

"funds statement" means a statement of sources and application of funds;

"group accounts", in relation to a holding company, means —

(a) a set of consolidated accounts for the group of companies of that holding company;

(b) 2 or more sets of consolidated accounts together covering that group;

(c) separate accounts for each corporation in that group; or

(d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group,

and includes, where the directors of the holding company —

(e) are required by this Part to cause a consolidated funds statement relating to the respective financial years of the holding company and its subsidiaries to be made out; or

(f) not being so required, cause such a funds statement to be made out for the purpose of being laid before the next annual general meeting of the holding company,

that funds statement, but does not include any other funds statement;

"group of companies", in relation to a holding company, means the holding company and the corporations that are its subsidiaries;

"holding company" means a company that is the holding company of a corporation;

"prescribed company" means a company specified, or a company included in a class of companies specified, in regulations made for the purposes of this definition;

"the profit and loss" means —

(a) in relation to a corporation that is not a holding company - the profit or loss resulting from operations of the corporation;

(b) in relation to a corporation that is a holding company of a group of companies for which group accounts are required - the profit or loss resulting from operations of the corporation;

(c) in relation to a corporation referred to in paragraph (b) and its subsidiaries - the profit or loss resulting from operations of the group of companies of which the corporation is the holding company; and

(d) in relation to a corporation that is a holding company of a group of companies for which group accounts are not required - the profit or loss resulting from operations of the corporation.

(2) An approved accounting standard shall be taken to be applicable to accounts of a company or to group accounts of a holding company if, at the time when the accounts or group accounts are made out, the approved accounting standard —

(a) applies in relation to the financial year of the company or holding company to which the accounts or group accounts relate; and

(b) is relevant to those accounts or group accounts.

Dormant corporations

334. (1) For the purposes of this Part, a corporation shall be taken to have been dormant throughout a particular period if, throughout that period, the corporation —

(a) did not receive or become entitled to any income or incur or become liable for any expenditure;

(b) did not purchase, sell or supply goods or other property or services, or enter into an agreement or pass a resolution in relation to the purchase, sale or supply of goods or other property or services;

(c) did not issue, sell, purchase or make available securities or enter into an agreement or pass a resolution in relation to the issue, sale, purchase or making available of securities;

(d) did not issue a prospectus or statement, or enter into an agreement or pass a resolution in relation to the issue of a prospectus or statement, in connection with the issue, sale, purchase or making available, or the proposed issue, sale, purchase or making available, of securities;

(e) did not take part in any research, development or exploration activities or enter into an agreement or pass any resolution in relation to taking part in research, development or exploration activities;

(f) was not, and did not become, a party to a lease, franchise, joint venture or partnership arrangement, and did not take part in a lease, franchise, joint venture or partnership arrangement, or enter into an agreement or pass a resolution in relation to becoming a party to, or taking part in, a lease, franchise, joint venture or partnership arrangement;

(g) did not make, receive or guarantee a loan, or enter into an agreement or pass a resolution in relation to making, receiving or guaranteeing a loan;

(h) was not, and did not become, a party to an underwriting agreement and did not enter into an agreement or pass a resolution in relation to becoming a party to an underwriting agreement;

(j) did not obtain or receive a grant of a licence or other authority, or make an application or pass a resolution in relation to obtaining a licence or other authority; and

(k) was not, and did not become, a party to any litigation or negotiations with some other person or body.

(2) A corporation shall not be taken not to have been dormant throughout a particular period by reason only that, during that period, the corporation —

(a) issued shares to a person who was a subscriber to the memorandum of the corporation;

(b) held shares in another corporation that was dormant throughout that period;

(c) received or became entitled to income by way of a payment of a charge imposed by the corporation in connection with the performance by the corporation of an obligation imposed by this Act, or by the law of a State or of a Territory other than Norfolk Island, being a charge imposed in accordance with this Act or that law, as the case may be; or

(d) incurred or became liable to any necessary expense in connection with the doing of an act or thing mentioned in paragraph (a) or (b) or in connection with the performance of an obligation imposed on the corporation or an officer of the corporation by this Act or by the law of a State or of a Territory other than Norfolk Island.

Application of approved accounting standards

335. (1) Subject to this section, an approved accounting standard applies —

(a) in a case to which paragraph (b) does not apply - in relation to the first financial year of a company that commences after the day on which the accounting standard is approved and in relation to subsequent financial years of the company; or

(b) if the accounting standard is expressed to apply in relation to financial years of companies that end after —

(i) the day on which the accounting standard is approved; or

(ii) the expiration of a specified period after the day on which the accounting standard is approved,

in relation to the first financial year of a company that ends after that day or the expiration of that period, as the case may be, and in relation to subsequent financial years of the company.

(2) Subject to subsection (3), where an approved accounting standard is expressed to replace another approved accounting standard, the other approved accounting standard does not apply in relation to the first financial year of a company in relation to which the first-mentioned approved accounting standard applies or in relation to any subsequent financial year of the company.

(3) Where an approved accounting standard is revoked, the approved accounting standard does not apply —

(a) in a case to which paragraph (b) does not apply - in relation to the first financial year of a company that commences after the day on which the approved accounting standard is revoked or in relation to any subsequent financial year of the company; or

(b) if the revocation of the approved accounting standard is expressed to have effect in relation to financial years of companies that end after —

(i) the day on which the approved accounting standard is revoked; or

(ii) the expiration of a specified period after the day on which the approved accounting standard is revoked,

in relation to the first financial year of a company that ends after that day or the expiration of that period, as the case may be, or in relation to any subsequent financial year of the company.

(4) A reference in this section to the approval or revocation of an accounting standard is a reference to its approval or revocation under the *Companies Act 1981* of the Commonwealth.

Interpretation of accounting standards

336. Unless the contrary intention appears in the accounting standard, an expression used in an approved accounting standard has, for the purposes of its application under this Act, the same meaning as the expression has in this Part.

Power of Registrar to require copy of accounts or group accounts

337. Where an auditor of a company or holding company has, pursuant to subsection 357(12), sent to the Registrar a copy of a report on the accounts or group accounts of the company or holding company the Registrar may, by notice in writing served on the company or holding company, require the company or holding company to furnish to the Registrar within 7 days after service of the notice a copy of those accounts or group accounts.

Division 2 — Accounts

Accounts to be kept

338. **(1)** A company shall —

(a) keep such accounting records as correctly record and explain the transactions of the company (including transactions as trustee) and the financial position of the company; and

(b) keep those records so as to enable —

(i) accounts showing fairly the financial position of the company to be prepared from time to time; and

(ii) those accounts to be conveniently and properly audited in accordance with this Act.

(2) A company shall retain the accounting records kept under this section or under a corresponding provision of the repealed laws for a period of 7 years after the completion of the transactions to which they relate.

(3) The company shall keep the accounting records at such place or places as its directors determine.

(4) If any accounting records of a company are kept at a place outside Norfolk Island, the company shall, if required by the Registrar to produce those records at a place in Norfolk Island, comply with the requirement not later than 28 days after the requirement is made.

(5) The accounting records of a company shall be kept in writing in the English language or so as to enable them to be readily accessible and readily convertible into writing in the English language.

(6) The Court may, on application by a director of a company, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the company.

(7) A company shall make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the company and by any other person authorised or permitted by or under this Act to inspect them.

(8) Where a registered company auditor inspects the accounting records pursuant to an order of the Court under subsection (6), he shall not disclose to a person other than the director on whose application the order was made information acquired by him in the course of his inspection.

(9) If default is made in complying with a provision of this section other than subsection (8), the company, a director of the company who failed to take all reasonable steps to secure compliance by the company with the provision and any officer of the company who is in default are each guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(10) In proceedings against a person for failure to take all reasonable steps to secure compliance by a company with a provision of this section, it is a defence if the person proves that he had reasonable grounds to believe and did believe that a competent and reliable person had the duty of seeing that that provision was complied with and was in a position to discharge that duty.

Financial years of grouped companies

339. (1) Subject to this section, the directors of a holding company shall ensure that the financial year of the company and the financial year of each of its subsidiaries are at all times the same.

(2) The action referred to in subsection (1) shall be taken in relation to a particular subsidiary not later than 12 months after the date on which the subsidiary became a subsidiary of the holding company.

(3) Subject to any order by the Registrar under this section, where the financial year of a holding company and the financial year of each of its subsidiaries are the same, the directors of the holding company shall at all times ensure that the financial year of the holding company or of a subsidiary is not altered in such a way that all of those financial years are no longer the same.

(4) Where the directors of a holding company are of the opinion that there is good reason why the financial year of a subsidiary should not be the same as the financial year of the holding company, they may apply in writing to the Registrar for an order authorising the subsidiary to continue to have or to adopt, as the case requires, a financial year that is not the same as that of the holding company.

(5) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding company, signed by not less than 2 directors and stating the reasons for seeking the order.

(6) The Registrar may require the directors making the application to supply such information relating to the operations of the holding company and of any related corporation as the Registrar thinks necessary for the purpose of determining the application.

(7) The Registrar may engage a registered company auditor to investigate and report to him on the application.

(8) The costs of an investigation and report under subsection (7) are payable by the holding company.

(9) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit, and shall serve a copy of the order on the holding company.

(10) Where the directors of a holding company have applied to the Registrar for an order under this section, subsection (1) shall be deemed not to apply to or in relation to the subsidiary to which the application relates until the determination of the application and of any appeal arising out of the application.

(11) Where an order is made authorising a subsidiary to have or to adopt a financial year that is not the same as that of its holding company, compliance with the terms of the order of the Registrar (including any limitations or conditions set out in the order) or, where there has been an appeal, compliance with the terms of any order made on the determination of the appeal, shall be deemed to be compliance with the provisions of subsection (1) in relation to the subsidiary.

(12) Where an application for an order by the Registrar under this section has been refused and there is no appeal, or where there has been an appeal and the appeal has been withdrawn or dismissed, the time within which the directors of the holding company are required to comply with the provisions of subsection (1) in relation to the subsidiary is the period of 12 months after the date on which the order of the Registrar is served on the holding company, or, where there has been an appeal that has been dismissed, the period of 12 months after the determination of the appeal.

(13) Where the directors of a holding company have applied to the Registrar for an order under this section, the application has been refused and the appeal (if any) arising out of the refusal has been dismissed, the directors of the holding company are not entitled to make an application under this section with respect to the subsidiary within 3 years after the refusal of the first-mentioned application or, where there was an appeal, after the dismissal of the appeal, unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances.

Profit and loss account, balance-sheet and group accounts

340. (1) The directors of a company shall, not less than 14 days before an annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required to be held, not less than 14 days before the end of that period, cause to be made out a profit and loss account for the last financial year of the company, being a profit and loss account that shows fairly the profit or loss of the company for that financial year.

(2) The directors of a company shall, not less than 14 days before an annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required to be held, not less than 14 days before the end of that period, cause to be made out a balance-sheet as at the end of the last financial year of the company, being a balance-sheet that shows fairly the state of affairs of the company as at the end of that financial year.

(3) Where, at the end of a financial year of a company, the company is a holding company, the directors of the company shall, not less than 14 days before the next annual general meeting of the company or, if no annual general meeting of the company is held within the period after the end of that financial year within which it is required to be held, not less than 14 days before the end of that period, cause to be made out group accounts dealing with —

(a) the profit or loss of the company and its subsidiaries for their respective last financial years; and

(b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

and showing fairly the profit or loss and state of affairs so far as they concern members of the holding company.

(4) Where, at the end of a financial year of a company, the company is a prescribed company, the directors of the company shall, not less than 14 days before the next annual general meeting of the company or, if no annual general meeting of the company is held within the period after the end of that financial year within which it is required by section 305 to be held, not less than 14 days before the end of that period, cause to be made out —

(a) in a case where paragraph (b) does not apply - a funds statement relating to that financial year, being a statement that shows fairly the sources and applications of the funds of the company during that financial year; or

(b) in a case where, at the end of that financial year, the company was a holding company - a consolidated funds statement relating to the respective last financial years of the company and its subsidiaries, being a statement that shows fairly the sources and applications of the funds of the company and of its subsidiaries during their respective last financial years.

(5) Where the directors of a company —

(a) are not required by subsection (2) to cause a funds statement relating to a financial year of the company to be made out; and

(b) cause a funds statement relating to that financial year to be made out for the purposes of laying before the next annual general meeting of the company,

the directors of the company shall cause the statement to be made out so as to show fairly the sources and applications of the funds of the company during that financial year.

(6) Where the directors of a holding company —

(a) are not required by subsection (4) to cause a consolidated funds statement relating to respective financial years of the holding company and its subsidiaries to be made out; and

(b) cause a consolidated funds statement relating to those respective financial years of the company and its subsidiaries to be made out for the purpose of laying before the next annual general meeting of the company,

the directors of the company shall cause the statement to be made out so as to show fairly the sources and applications of the funds of the company and of its subsidiaries during those respective financial years.

(7) The directors of a company, other than a company that pursuant to this Part did not appoint an auditor to audit the accounts concerned, shall take reasonable steps to ensure that the accounts of the company and, if it is a holding company for which group accounts are required, the group accounts are audited as required by this Part not less than 14 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required to be held, not less than 14 days before the end of that period.

(8) The directors of a company shall cause to be attached to, or endorsed upon the accounts or group accounts in relation to the company the auditor's report relating to those accounts or group accounts, as the case may be, that is furnished to the directors.

(9) Group accounts are not required to be made out by the directors of a company in accordance with subsection (3) where the company is, at the end of its financial year, a wholly-owned subsidiary of another corporation incorporated in Norfolk Island.

(10) The directors shall, before the profit and loss account and balance-sheet referred to in subsections (1) and (2) are made out, take reasonable steps —

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realise, whether directly or indirectly, in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause —

(i) those assets to be written down to an amount that they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(c) to ascertain whether any non-current asset is shown in the books of the company at an amount that, having regard to its value to the company as a going concern, exceeds the amount that it would have been reasonable for the company to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(11) Without affecting the generality of the preceding provisions of this section, the directors of a company shall ensure that the accounts of the company and, if it is a holding company for which group accounts are required, the group accounts comply with such of the prescribed requirements as are relevant to those accounts or group accounts, as the case may be, but where accounts or group accounts prepared in accordance with those requirements would not otherwise show fairly the matters required by this section to be dealt with in the accounts or group accounts, the directors of the company shall add such information and explanations as will cause those matters to be shown fairly.

(12) Without affecting the generality of the preceding provisions of this section, the directors of a company shall ensure that the accounts of the company and, if the company is a holding company for which group accounts are required, the group accounts of the company are made out in accordance with applicable approved accounting standards.

(13) Notwithstanding subsection (12), where the accounts of a company or the group accounts of a holding company would not, if made out in accordance with a particular applicable approved accounting standard, show fairly the matters required by this section to be dealt with in those accounts or group accounts, as the case may be, the directors of the company or holding company are not required to ensure that those accounts or group accounts, as the case may be, are made out in accordance with that accounting standard.

(14) The directors of a company shall cause to be attached to accounts required to be laid before an annual general meeting of the company, before the auditor reports on the accounts under this Part, a statement made, not more than 56 days before the date of the annual general meeting or, if no annual general meeting of the company is held within the period within which it is required to be held, not more than 56 days before the end of that period, in accordance with a resolution of the directors and signed by at least 2 directors —

(a) stating whether, in the opinion of the directors —

(i) the profit and loss account is drawn up so as to show fairly the profit or loss of the company for its last financial year (in this subsection referred to as "the financial year");

(ii) the balance-sheet is drawn up so as to show fairly the state of affairs of the company as at the end of the financial year;

(iii) if the accounts include a funds statement - the statement is drawn up so as to show fairly the sources and application of the funds of the company during the financial year; and

(iv) as at the date of the statement, there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due;

(b) stating whether the accounts have been made out in accordance with applicable approved accounting standards;

(c) if the accounts have not been made out in accordance with a particular applicable approved accounting standard —

(i) stating why the accounts, if made out in accordance with that accounting standard, would not show fairly the matters required by this section to be dealt with in the accounts; and

(ii) giving particulars in money terms of the effect on the accounts of the failure to make out the accounts in accordance with that accounting standard; and

(d) where the company was dormant throughout the period commencing at the commencement of the financial year and ending on the day on which the statement is made - stating that the company was so dormant.

(15) The directors of a company that is a holding company shall cause to be attached to group accounts of the company required by section 345 to be laid before an annual general meeting of the company, before the auditor reports on the group accounts under this Part, a statement made, not more than 56 days before the date of the annual general meeting, or, if no annual general meeting of the company is held within the period within which it is required to be held, not more than 56 days before the end of that period, in accordance with a resolution of the directors and signed by at least 2 directors —

(a) stating whether, in the opinion of the directors, the group accounts show fairly —

(i) the profit or loss of the company and of its subsidiaries for their respective last financial years; and

(ii) the state of affairs of the company and of its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the company;

(b) if the group accounts include a funds statement - stating whether, in the opinion of the directors, the statement is drawn up so as to show fairly the sources and applications of the funds of the company and of its subsidiaries during their respective last financial years;

(c) stating whether the group accounts have been made out in accordance with applicable approved accounting standards;

(d) if the group accounts have not been made out in accordance with a particular applicable approved accounting standard —

(i) stating why the group accounts, if made out in accordance with that accounting standard, would not show fairly the matters required by this section to be dealt with in the group accounts; and

(ii) giving particulars in money terms of the effect on the group accounts of the failure to make out the group accounts in accordance with that accounting standard; and

(e) where —

(i) the company was dormant throughout the period commencing at the commencement of its last financial year and ending on the day on which the statement is made; and

(ii) each corporation that was a subsidiary of the company at any time during that financial year was dormant throughout each period since the commencement of that financial year during which it was a subsidiary of the company,

stating that the company and each such corporation were so dormant.

(16) The directors of a company shall —

(a) in forming an opinion, for the purposes of a statement under subsection (14) in relation to accounts of the company, as to the matters specified in subparagraphs (14)(a)(i), (ii) and (iii), have regard to —

(i) circumstances that have arisen; and

(ii) information that has become available,

since the end of the financial year to which the accounts relate, being circumstances or information that, if those accounts had been made out when the statement was made, would have affected the determination of an amount or particular in those accounts; and

(b) if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances that are, or information that is, relevant to an understanding of those accounts or of an amount or particular in those accounts - include in the statement such information and explanations as will prevent those accounts or that amount or particular from being misleading by reason that the adjustments have not been made.

(17) The directors of a company that is a holding company shall —

(a) in forming an opinion, for the purposes of a statement under subsection (15) in relation to group accounts of the company, as to the matters specified in paragraphs (15)(a) and (b), have regard to circumstances that have arisen, and information that has become available —

(i) in the case of circumstances or information concerning the company - since the end of the financial year of the company to which those accounts relate; or

(ii) in the case of circumstances or information concerning a subsidiary of the company - since the end of the financial year of that subsidiary to which those accounts relate,

being circumstances or information that would, if those accounts had been made out when the statement was made, have affected the determination of an amount or particular in those accounts; and

(b) if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances that are, or information that is, relevant to an understanding of those accounts or of an amount or particular in those accounts - include in the statement such information and explanations as will prevent those accounts or that amount or particular from being misleading by reason that the adjustments have not been made.

(18) This section applies —

(a) in the case of a company that is not a holding company - in relation to the first financial year of the company that commences after the date of commencement of this Act and in relation to each subsequent financial year of the company; and

(b) in the case of a company that is a holding company —

(i) in relation to the first financial year of the company that commences after the date of commencement of this Act and the financial year of each corporation that is a subsidiary of the company that ended during, or at the end of, that financial year of the company; and

(ii) in relation to each subsequent financial year of the company and of each corporation that is a subsidiary of the company.

Directors' reports

341. (1) The directors of a company, other than a company to which subsection (2) applies, shall, not less than 14 days and not more than 56 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is to be held, not less than 14 days and not more than 56 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least 2 directors —

(a) stating —

(i) the names of the directors in office at the date of the report;

(ii) the principal activities of the company in the course of its last financial year and any significant change in the nature of those activities that occurred during that financial year;

(iii) the net amount of the profit or loss of the company for that financial year after provision for taxation (if any) in respect of the profit or loss; and

(iv) the amount (if any) that the directors recommend should be paid by way of dividend, the proposed date of payment and any amounts that have been paid or declared by way of dividend since the commencement of that financial year, and indicating which of those amounts (if any) have been shown in a previous report of the directors;

(b) containing a review of the operations of the company during that financial year and of the results of those operations;

(c) giving particulars of any significant change in the state of affairs of the company that occurred during that financial year;

(d) giving particulars of any matter or circumstance that has arisen since the end of that financial year and has significantly affected or may significantly affect —

(i) the operations of the company;

(ii) the results of those operations; or

(iii) the state of affairs of the company,

in financial years subsequent to that financial year; and

(e) referring to —

(i) likely significant changes in the operations of the company; and

(ii) the expected results of those operations,

in financial years subsequent to that financial year.

(2) The directors of a company that, at the end of its last financial year, was a holding company (other than a holding company that was a wholly-owned subsidiary of a company) shall, not less than 14 days and not more than 56 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required to be held, not less than 14 days and not more than 56 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least 2 directors —

(a) stating —

(i) the names of the directors of the company in office at the date of the report;

(ii) the principal activities of the corporations in the group of companies of the holding company in the course of that financial year and any significant change in the nature of those activities that occurred during that financial year;

(iii) the net amount of the consolidated profit or loss of the group for that financial year after provision for taxation (if any) in respect of the profit or loss and after deducting from that consolidated profit or loss any amounts that should properly be attributed to some person other than a corporation in the group; and

(iv) the amount (if any) that the directors of the company recommend should be paid by way of dividend, the proposed date of payment and any amounts that have been paid or declared by way of dividend since the commencement of that financial year, and indicating which of those amounts (if any) have been shown in a previous report of the directors;

(b) containing a review of the operations of the group during that financial year and of the results of those operations;

(c) giving particulars of any significant change in the state of affairs of the group that occurred during that financial year;

(d) giving particulars of any matter or circumstance that has arisen since the end of that financial year and has significantly affected or may significantly affect —

(i) the operations of the group;

(ii) the results of those operations; or

(iii) the state of affairs of the group,

in financial years subsequent to that financial year; and

(e) referring to —

(i) likely significant changes in the operations of the group; and

(ii) the expected results of those operations,

in financial years subsequent to that financial year.

(3) Where, in the opinion of the directors of a company, it would prejudice the interest of the company if particular information, being some or all of the information required by paragraph (1)(e) or (2)(e) to be included in a report, were so included, the particular information need not be included in the report, but the report shall state that some or all, as the case may be, of the information required by that paragraph to be so included has not been so included.

(4) The directors of a public company shall include in, or attach to, a report made for the purpose of subsection (1) or (2) a statement setting out, as at the date of the statement, in respect of each director of the company —

(a) particulars of the qualifications, experience and special responsibilities (if any) of the director;

(b) particulars of shares in the company or in a corporation that is related to the company, being particulars that are required, by paragraph 291(1)(a), to be shown with respect to that director in a register kept in accordance with subsection 291(1); and

(c) particulars of any interest of the director in a contract or proposed contract with the company, being an interest the nature of which has been declared by the director in accordance with subsection 284(1).

(5) Where a company, other than a holding company for which group accounts are required, has at any time granted to a person an option to have issued to him shares in the company, the directors shall state in the report made under this section —

(a) in the case of an option so granted during the financial year or since the end of the financial year —

(i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or debentures or of the shares or debentures included in a class of shares or debentures of that company or of another corporation, that the option was so granted;

(ii) the number and classes of shares in respect of which the option was granted;

(iii) the date of expiration of the option;

(iv) the basis upon which the option is or was to be exercised; and

(v) whether a person entitled to exercise the option had or has a right, by virtue of the option, to participate in a share issue of some other corporation;

(b) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option; and

(c) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in a share issue of some other corporation.

(6) Where any of the particulars required by subsection (4) have been stated in a previous report of the directors, they may be stated by reference to that report.

(7) Where a holding company or any of its subsidiaries has at any time granted to a person an option to have issued to him shares in the company or subsidiary, the directors of the company shall state in the report made under this section the name of the corporation in respect of shares in which the option was granted and the other particulars referred to in subsection (5).

(8) The directors of a company shall state in the report whether, since the end of the previous financial year, a director of the company has received or become entitled to receive a benefit, other than —

(a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the company is a holding company, the group accounts, in accordance with the regulations made for the purposes of subsection 340(11); or

(b) the salary of a full-time employee of the company or of a related corporation,

by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.

(9) Where there is attached to or included with a report of the directors laid before a company at its annual general meeting or sent to the members under section 344 a statement, report or other document relating to affairs of the company or of a subsidiary, not being a statement, report or document required by this Act to be laid before the company in general meeting, the statement, report or other document shall, for the purposes of section 653, be deemed to be part of that first-mentioned report.

(10) The directors of a company are not required to comply with the requirements of this section in relation to a financial year of the company if —

(a) in the case of a company that is not a holding company - the company was dormant throughout the period commencing at the commencement of that financial year and ending on the prescribed day; or

(b) in the case of a company that is a holding company —

(i) the company was dormant throughout the period (in this paragraph referred to as "the relevant period") commencing at the commencement of that financial year and ending on the prescribed day; and

(ii) each corporation that was a subsidiary of the company at any time during that financial year was dormant throughout so much of each period during which it was a subsidiary of the company as falls within the relevant period.

(11) In subsection (10), "the prescribed day" in relation to a financial year of a company, means the fourteenth day —

(a) in a case to which paragraph (b) does not apply - before the annual general meeting of the company held in relation to that financial year; or

(b) if no annual general meeting of the company is held in relation to that financial year within the period within which it is required to be held - before the end of that period.

(12) Where, at the end of a financial year of a company, the company was a wholly-owned subsidiary of another company, subsection (1) applies in relation to that first-mentioned company in relation to that financial year as if paragraphs (1)(b), (c), (d) and (e) were omitted.

(13) Where, at the end of a financial year of a company, the company was an exempt proprietary company, subsection (1) or (2), as the case requires, applies in relation to that company in relation to that financial year as if paragraphs (b), (c), (d) and (e) of that subsection were omitted.

(14) The directors of a public company are not required to comply with the requirements of subsection (4) in relation to a financial year of the company if, at the end of that financial year, the company was a wholly-owned subsidiary of a company.

(15) This section applies —

(a) in relation to a company that is not a holding company - in relation to the first financial year of the company that commences after the date of commencement of this Act and in relation to each subsequent financial year of that company; and

(b) in relation to a company that is a holding company —

(i) in relation to the first financial year of the company that commences after the date of commencement of this Act and the financial year of each corporation that is a subsidiary of the company that ended during, or at the end of, that financial year of the company; and

(ii) in relation to each subsequent financial year of the company and of each corporation that is a subsidiary of the company.

Directors of holding company to obtain all necessary information

342. (1) Subject to subsection (3), the directors of a holding company shall not cause to be made out the group accounts referred to in subsection 340(3), the statement referred to in section 340 or the report referred to in subsection 341(2) unless they have available to them sufficient information, in relation to each subsidiary, to enable them to ensure —

(a) that the group accounts will show fairly —

(i) the profit or loss of the holding company and of its subsidiaries for their respective last financial years; and

(ii) the state of affairs of the holding company and of its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the holding company; and

(b) that neither the statement nor the report will be false or misleading in a material particular.

(2) The directors of a subsidiary shall, at the request of the directors of its holding company, supply to the holding company all the information that is required by the directors of the holding company for the preparation of the group accounts, the statement and the report referred to in subsection (1).

(3) Where the directors of a holding company have taken all such steps as are reasonably available to them but are unable to obtain from the directors of a subsidiary the information required by the directors of the holding company for the preparation of the group accounts, the statement and the report referred to in subsection (1) within the period within which they are respectively required, by the provisions referred to in that subsection, to be prepared —

(a) the directors of the holding company shall cause to be made out those group accounts, that statement and that report without incorporating in, or including with, those group accounts, or incorporating in that statement or report, as the case requires, the information relating to the subsidiary, but —

(i) shall include in those group accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall also include such qualifications and explanations as are necessary to prevent the group accounts, the statement and that report from being misleading in a material particular; and

(ii) may qualify accordingly that part of that statement that is made in pursuance of paragraph 340(14)(a); and

(b) where the directors of the holding company have caused to be made out group accounts, a statement and a report in accordance with paragraph (a), they shall, within one month after receiving any of that information from the directors of the subsidiary —

(i) lodge with the Registrar a statement setting out or summarising the information and containing such qualifications and explanations, by the directors of the holding company, of the group accounts, the statement or the report as are necessary having regard to the information received from the directors of the subsidiary; and

(ii) send to each shareholder a copy of the statement.

Relief from requirements as to accounts and reports

343. (1) The directors of a company may apply to the Registrar in writing for an order relieving them from compliance with a specified requirement of this Act relating to, or to the audit of, accounts or group accounts or to the report required by subsection 341(1) or (2) and the Registrar may make an order relieving the directors from compliance with all or any of those requirements either unconditionally or on condition that the directors comply with such other requirements relating to, or to the audit of, the accounts or group accounts or to the report as the Registrar imposes.

(2) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the company, signed by not less than 2 directors and stating the reasons for seeking the order.

(3) The Registrar may require the directors making the application to supply such information relating to the operations of the company, and of any related corporation, as the Registrar thinks necessary for the purpose of determining the application.

(4) Notice of an order under subsection (1) shall be served on the company to which it relates.

(5) The Registrar may, where he considers it appropriate, make an order in respect of the companies included in a specified class of companies relieving the directors of a company included in that class from compliance with a specified requirement of this Act relating to, or to the audit of, accounts or group accounts or to the report required by subsection 341(1) or (2).

(6) The order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to, or to the audit of, accounts or group accounts or to the report as the Registrar imposes.

(7) Notice of an order under subsection (5) shall be published in the Gazette.

(8) The Registrar shall not make an order under subsection (1) or (5) unless —

(a) in the case of an order relating to the form or content of accounts or group accounts or of a report required by subsection 341(1) or (2) - the Registrar is satisfied that compliance with the requirements of this Act would render the accounts or group accounts or the report, as the case may be, misleading or inappropriate in the circumstances of the company or would impose unreasonable burdens on the company or on an officer of the company; or

(b) the company —

(i) is not carried on for the purposes of profit or gain to its individual members;

(ii) is, by the terms of its memorandum or articles, prohibited from making a distribution, whether in money, property or otherwise, to its members; and

(iii) is required by or under a law in force in Norfolk Island to prepare annually a statement of its income and expenditure or a statement as to its financial position, or both.

(9) The Registrar may make an order under subsection (1) or (5) that is limited to a particular period and —

(a) in the case of an order under subsection (1) - may either on application by the directors, or without an application, revoke or suspend the operation of the order; or

(b) in the case of an order under subsection (5) - may revoke or suspend the operation of the order.

(10) The revocation or suspension under subsection (9) of an order does not take effect —

(a) in the case of an order under subsection (1) - until notice of the revocation or suspension is served on the company to which the order relates; and

(b) in the case of an order under subsection (5) - until notice of the revocation or suspension is published in the Gazette.

Members of company entitled to balance-sheet, etc

344. (1) A company shall, not later than the time when it sends notice of an annual general meeting of the company to prescribed persons in relation to the company, or, in a case where the company sends notice of an annual general meeting of the company to prescribed persons in relation to the company more than 14 days before the meeting, not less than 14 days before the meeting, send to each prescribed person in relation to the company, a copy of all accounts and, if it is a holding company, group accounts that are to be laid before the company at the meeting, accompanied by a copy of the statements required under section 340, a copy of the directors' report required under section 341 and a copy of the auditor's report or reports.

(2) In subsection (1), "prescribed person", in relation to a company, means a person who is entitled to receive notices of general meetings of the company.

(3) A company shall furnish to a member of a company, whether or not he is entitled to have sent to him copies of the accounts or group accounts, to whom copies have not been sent, or to a holder of debentures of the company, on request in writing being made by him to the company, as soon as practicable and without charge, a copy of the last accounts and group accounts (if any) laid or to be laid before the company at its annual general meeting, together with copies of the other documents required under subsection (1) to accompany those accounts and group accounts.

(4) It is a defence to a prosecution for a failure to comply with subsection (1) or (3) if the defendant proves that the person in relation to whom the failure occurred had, before the failure occurred, been furnished with a copy of the accounts or group accounts and all documents referred to in subsections (1) and (2).

(5) Subsections (1) and (3) do not apply to a company in relation to an annual general meeting that by section 315 is to be deemed to have been held.

Penalty: 10 penalty units.

Accounts and reports to be laid before annual general meeting

345. The directors of a company shall cause to be laid before each annual general meeting of the company —

(a) a copy of the profit and loss account made out in accordance with subsection 340(1) for the last financial year of the company;

(b) a copy of the balance-sheet made out in accordance with subsection 340(2) as at the end of the last financial year of the company;

(c) in the case of a company that, at the end of its last financial year before the relevant annual general meeting, was not a holding company - a copy of the directors' report made out in accordance with subsection 341(1) in respect of that financial year;

(d) in the case of a company that, at the end of its last financial year before the relevant annual general meeting, was a holding company - a copy of the group accounts made out in accordance with subsection 340(3) in relation to that financial year and a copy of the directors' report made out in accordance with subsection 341(2) in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year;

(e) a copy of any funds statement made out in accordance with section 340 in relation to the last financial year of the company before the relevant annual meeting;

(f) a copy of each auditor's report required by section 340 to be attached to the accounts or group accounts of the company; and

(g) a copy of the statement by the directors required by section 340 or to be attached to the accounts or group accounts of the company.

Registrar may require lodgment of accounts, etc

346. (1) The Registrar may, by notice in writing served on a company, require the company to lodge with the Registrar a copy of the relevant documents of the company in relation to a specified financial year, or specified financial years, of the company.

(2) A company on which the Registrar has served a notice under subsection (1) shall, within 14 days after receiving the notice, lodge with the Registrar a copy of the relevant documents of the company in relation to the financial year of the company that is, or each of the financial years of the company that are, specified in the notice.

(3) A company is not required to lodge a copy of a particular document pursuant to a notice under subsection (1) if the company has previously lodged the document, or a copy of the document, with the Registrar.

(4) A company is not required to lodge a copy of a particular document pursuant to a notice under subsection (1) if, as at the time when the notice is served —

(a) in the case of a document other than an auditor's report - the document has not been made out; or

(b) in the case of an auditor's report - the document has not been furnished to the directors of the company,

but if the document is made out, or is so furnished, as the case may be, after that time, the company shall lodge with the Registrar a copy of the document within 14 days after the document is made out, or is so furnished, as the case may be.

(5) In this section —

(a) a reference to the relevant documents of a company in relation to a financial year of the company is a reference to the documents copies of which section 345 requires the directors of the company to cause to be laid before the annual general meeting of the company that is required to be held in relation to that financial year; and

(b) a reference to a financial year of a company is a reference to a financial year of the company the company's accounts relating to which were not required to be audited under this Part and includes a reference to such a financial year of the company that commenced before the commencement of this Act.

Failure to comply

347. (1) Subject to this section, if a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of a default under, any of the preceding provisions of this Division (including any of those provisions as applying by virtue of section 232) other than section 338, he is guilty of an offence.

Penalty: 20 penalty units or imprisonment or both.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a company or group accounts of a holding company by reason of an omission from the accounts or group accounts (including any of those provisions as applying by virtue of section 232), it is a defence to prove that the information omitted was immaterial and did not affect the fair showing of the matters required by section 340 to be dealt with in the accounts or group accounts, as the case may be.

(3) If, after the expiration of the period within which accounts of a company or a report of the directors of a company is or are required by section 340 or 341 to be made out, the Registrar, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with section 340 or 341, proof of the failure to produce the accounts or report as required by the notice is evidence that the accounts or report were not made out within that period.

Division 3 — Audit

Qualifications of auditors

348. **(1)** Subject to this section, a person shall not —

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company; or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company,

if —

(d) the person is not a registered company auditor;

(e) the person, is indebted in an amount exceeding $5,000 to the company or to a related corporation; or

(f) except where the company is an exempt proprietary company, the person —

(i) is an officer of the company;

(ii) is a partner, employer or employee of an officer of the company; or

(iii) is a partner or employee of an employee of an officer of the company.

(2) Subject to this section, a firm shall not —

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company; or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company,

unless —

(d) at least one member of the firm is a registered company auditor who is ordinarily resident in Australia, New Zealand or Norfolk Island;

(e) there has been lodged with the Registrar a return showing, in relation to each member of the firm, his full name and his address as at the time when the firm so consents, acts or prepares a report;

(f) no member of the firm is indebted in an amount exceeding $5,000 to the company or to a related corporation;

(g) except where the company is an exempt proprietary company, no member of the firm is —

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company; and

(h) except where the company is an exempt proprietary company, no officer of the company receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) For the purposes of subsections (1) and (2), if, in relation to a company —

(a) a person is an officer of a related corporation; or

(b) except where the Registrar, if he thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person - a person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related corporation,

the person shall be deemed to be an officer of the company.

(4) For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of his being or having been the liquidator of that company or of a related corporation.

(5) For the purposes of this section, a person shall not be taken to be an officer of a company by reason only —

(a) of his having been appointed as auditor of that company or of a related corporation; or

(b) of his being or having been authorised to accept on behalf of the company or a related corporation service of process or notices required to be served on the company or related corporation.

(6) The appointment of a firm as auditor of a company shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Norfolk island or not, at the date of the appointment.

(7) Where a firm that has been appointed as auditor of a company is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both —

(a) a person who is to be deemed under subsection (6) to be an auditor of the company and has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the company as from the day of his retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 354 does not apply to that resignation;

(b) a person who is a registered company auditor and is so admitted to the firm shall be deemed to have been appointed as an auditor of the company as from the date of his admission; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the company,

(8) Subsection (7) does not affect the operation of subsection (2).

(9) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a company that is to be deemed by subsection (6) to have been made by reason of the appointment of the firm as auditor of the company is not affected by the dissolution of the firm.

(10) A report or notice that purports to be made or given by a firm appointed as auditor of a company shall not be taken to be duly made or given unless it is signed in the firm name and also in his own name by a member of the firm who is a registered company auditor.

(11) Without limiting the generality of section 660, if, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a company or prepares a report required by this Act to be prepared by an auditor of a company, each member of the firm is guilty of an offence.

Registrar may approve person as auditor

349. (1) Where the Registrar is satisfied that it is impracticable for an exempt proprietary company to obtain the services of a registered company auditor as auditor of the company, a person who is suitably qualified or experienced and is approved by the Registrar for the purposes of this Act in relation to the audit of the company's accounts may be appointed as auditor of the company, subject to such terms and conditions as are specified in the approval.

(2) A person appointed in accordance with subsection (1) shall, in relation to the auditing of the company's accounts and, if it is a holding company for which group accounts are required, group accounts but subject to the terms and conditions of the approval under that subsection, be deemed to be a registered company auditor and the provisions of this Act, with the necessary modifications, apply to and in relation to him accordingly.

(3) Where a person approved by the Registrar under subsection (1) is acting as auditor of a company, the Registrar may at any time, by notice in writing given to the company —

(a) amend, revoke or vary the terms and conditions of his approval; or

(b) terminate the appointment of that person as auditor of the company.

(4) A notice under subsection (3) takes effect as if, on the date on which the notice is received by the company, the company had received from the person notice of his resignation as auditor taking effect from that date.

Auditors not to disqualify themselves

350. A person shall not —

(a) if he has been appointed auditor of a company - knowingly disqualify himself while the appointment continues from acting as auditor of the company; or

(b) if he is a member of a firm that has been appointed auditor of a company - knowingly disqualify the firm while the appointment continues from acting as auditor of the company.

Exempt proprietary company need not appoint auditor in certain circumstances

351. (1) Notwithstanding the provisions of this Part, an exempt proprietary company is not required to appoint an auditor at an annual general meeting if, not more than one month before the meeting, all the members of the company have agreed that it is not necessary for the company to appoint an auditor.

(2) The directors of an exempt proprietary company are not required to comply with subsection 352(1) if all the members of the company have agreed, on a date not later than 14 days after the incorporation of the company, that it is not necessary for the company to appoint an auditor.

(3) Where a company, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(4) An exempt proprietary company that, at an annual general meeting, did not appoint an auditor shall, at the next annual general meeting of the company, appoint an auditor unless the conditions referred to in subsection (1) are satisfied.

(5) Where, by reason of the circumstances referred to in subsection (1) or (2), accounts or group accounts of a company required to be laid before the company at its annual general meeting are not audited, there shall be included in, or attached to, the annual return of the company for the financial year to which the accounts or group accounts relate a certificate signed by not less than 2 directors of the company stating whether —

(a) the company has, in respect of the financial year —

(i) kept such accounting records as correctly record and explain the transactions and financial position of the company;

(ii) kept its accounting records in such a manner as would enable proper accounts of the company to be prepared from time to time; and

(iii) kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act; and

(b) the accounts and group accounts (if any) have been properly prepared by a competent person.

(6) Where —

(a) directors of a company state in a certificate in respect of a financial year of the company that —

(i) the company did not keep such accounting records as are required by this Act to be kept;

(ii) the accounting records of the company were not kept in the manner required by this Act; or

(iii) the accounts of the company have not been properly prepared by a competent person; or

(b) a director of a company has been convicted under subsection 653(2) of an offence in relation to a certificate under subsection (5) of this section,

there shall be deemed to be a vacancy in the office of auditor of the company and subsection 352(6) applies to that vacancy.

(7) Where a company, by reason of circumstances referred to in subsection (1) or (2), does not have an auditor and all the members of the company have agreed that the company should appoint an auditor, an auditor may be appointed as if a vacancy had occurred in the office of auditor.

(8) Within one month after a company that, by reason of circumstances referred to in subsection (1) or (2), does not have an auditor ceases to be an exempt proprietary company, the directors of the company shall appoint an auditor or auditors.

(9) Subsection (8) does not apply where the company has, at a general meeting, appointed an auditor or auditors.

(10) If, within 14 days after a company that has an auditor becomes an exempt proprietary company, all the members of the company so agree, the company may terminate the appointment of the auditor and, where the appointment is so terminated, a vacancy in the office of auditor of the company shall be deemed not to have occurred.

(11) A person or firm appointed as auditor of a company under subsection (6) or (8) holds office, subject to this Division, until the next annual general meeting of the company and subsection (1) does not apply to or in relation to that company.

Appointment of auditors

352. (1) Within one month after the incorporation of a company, the directors of the company shall appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(2) Subsection (1) does not apply where the company has, at a general meeting, appointed an auditor or auditors.

(3) A person or firm appointed as auditor of a company under subsection (1) holds office, subject to this Division, until the first annual general meeting of the company.

(4) A company shall —

(a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company; and

(b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the company, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(5) A person or firm appointed as auditor under subsection (4) holds office until death or removal or resignation from office in accordance with section 354 or until ceasing to be capable of acting as auditor by reason of subsection 348(1) or (2).

(6) Within one month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of a company, if there is no surviving or continuing auditor of the company, the directors of the company shall, unless —

(a) the company at a general meeting has made an appointment to fill the vacancy; or

(b) where the company is an exempt proprietary company, all the members of the company have within one month after the vacancy occurs agreed that it is not necessary for the vacancy to be filled,

appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the a vacancy.

(7) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(8) A company or the directors of a company shall not appoint a person or firm as auditor of the company unless that person or firm has, before the appointment, consented by notice in writing given to the company or to the directors to act as auditor and has not withdrawn his or its consent by notice in writing given to the company or to the directors.

(9) A notice under subsection (8) given by a firm shall be signed in the firm name and also in his own name by a member of the firm who is a registered company auditor.

(10) If a company appoints a person or firm as auditor of a company in contravention of subsection (8), the purported appointment does not have any effect and the company and any officer of the company who is in default are each guilty of an offence.

(11) Where an auditor of a company is removed from office at a general meeting in accordance with section 354, the company may at that meeting (without adjournment), by a resolution passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with subsection 353(3).

(12) If such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed —

(a) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting; and

(b) the company may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the company from a member of the company at least 14 clear days before the date to which the meeting is adjourned.

(13) Where after the removal from office of an auditor of a company the company fails to appoint an auditor under subsection (11) or (12), the company shall, within the period of 7 days commencing on the day of the failure, give to the Registrar notice of the failure, and, subject to subsection (14), the Registrar —

(a) in a case where the company, before the expiration of that period, gives to the Registrar notice of the failure - shall, upon receiving the notice; or

(b) in any other case —

(i) may, at any time after the expiration of that period and before the Registrar receives from the company notice of the failure; and

(ii) if the company, after the expiration of that period, gives to the Registrar notice of the failure - shall, upon receiving the notice,

appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(14) Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under subsection (11) or (12), the Registrar shall not appoint an auditor of the company under subsection (13) —

(a) if there is another auditor of the company who the Registrar believes is able to carry out the responsibilities of auditor alone and agrees to continue as auditor;

(b) in the case of an exempt proprietary company, if —

(i) all the members have, since the removal from office of the first-mentioned auditor, agreed that it is not necessary for an auditor to be appointed; and

(ii) the company has given to the Registrar notice of the failure and has, at the time of giving to the Registrar notice of the failure, given to the Registrar notice that all the members have so agreed; or

(c) in a case where, at the expiration of the period of 7 days commencing on the day of the failure, the company has not given to the Registrar notice of the failure - if the Registrar has, at any time after the expiration of that period, already appointed an auditor of the company under subsection (13).

(15) Subject to subsection (13), if a company does not appoint an auditor when required by this Act to do so, the Registrar may, on the application in writing of a member of the company, appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(16) A person or firm appointed as auditor of a company under subsection (6), (11), (12) or (15) holds office, subject to this Division, until the next annual general meeting of the company.

(17) Notwithstanding subsection (5), an auditor of a company that becomes a subsidiary of a corporation shall, unless he sooner vacates his office, retire at the annual general meeting of that subsidiary next held after it becomes such a subsidiary but, subject to this Division, is eligible for re-appointment.

(18) If a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, subsection (1) or (6), he is guilty of an offence.

Nomination of auditors

353. (1) Subject to this section, a company may not appoint a person or a firm as auditor of the company at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of his or its nomination was given to the company by a member of the company —

(a) before the meeting was convened; or

(b) not less than 21 days before the meeting.

(2) If a company purports to make an appointment in contravention of subsection (1), the purported appointment is of no effect and the company and any officer of the company who is in default are each guilty of an offence.

(3) Where notice of nomination of a person or firm for appointment as auditor of a company is received by the company, whether for appointment at a meeting, at an adjourned meeting referred to in subsection 352(12) or at an annual general meeting, the company shall —

(a) not less than 7 days before the meeting; or

(b) at the time notice of the meeting is given,

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the company and to each person entitled to receive notice of general meetings of the company.

Removal and resignation of auditors

354. (1) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(2) Where such a notice is received by a company, it shall forthwith send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.

(3) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the company and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company at its expense to each member of the company to whom notice of the meeting is sent.

(4) Unless the Registrar on the application of the company otherwise directs, the company shall send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) An auditor of a company may, by notice in writing given to the company, resign as auditor of the company if —

(a) he has, by notice in writing given to the Registrar, applied for consent to his resignation and stated the reasons for his application and, at or about the same time as he gave notice to the Registrar, notified the company in writing of the application; and

(b) he has received the consent of the Registrar.

(6) The Registrar shall, as soon as practicable after receiving a notice under subsection (5), notify the auditor and the company whether he consents to the resignation of the auditor.

(7) A statement made by an auditor in an application under subsection (5) or in answer to an inquiry by the Registrar relating to the reasons for the application —

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate by the Registrar that the statement was made in the application or answer is conclusive evidence that the statement was so made.

(8) Subject to any order of the Court on appeal and to subsection (9), the resignation of an auditor takes effect —

(a) on the date (if any) specified for the purpose in the notice of resignation;

(b) on the date on which the Registrar gives his consent to the resignation; or

(c) on the date (if any) fixed by the Registrar for the purpose,

whichever is the later or latest date.

(9) The resignation of an auditor of an exempt proprietary company does not require the consent of the Registrar under subsection (5) and takes effect —

(a) on the date on which the notice is received by the company; or

(b) if a later date is specified for the purpose in the notice, on that later date.

(10) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph 348(2)(d) of acting as auditor of a company, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he obtains the consent of the Registrar to his retirement or withdrawal.

(11) Within 14 days after —

(a) the removal from office of an auditor of a company; or

(b) the receipt of a notice of resignation from an auditor of a company;

the company shall —

(c) lodge with the Registrar a notice of the removal or resignation; and

(d) where there is a trustee for the holders of debentures of the company - give to the trustee a copy of the notice lodged with the Registrar.

Effect of winding up on office of auditor

355. An auditor of a company ceases to hold office if —

(a) a special resolution is passed for the voluntary winding up of the company; or

(b) in a case to which paragraph (a) does not apply - an order is made by the Court for the winding up of the company.

Fees and expenses of auditors

356. The reasonable fees and expenses of an auditor of a company are payable by the company.

Powers and duties of auditors as to reports on accounts

357. (1) An auditor of a company shall report to the members on the accounts required to be laid before the company at an annual general meeting and on the company's accounting records and other records relating to those accounts and, if it is a holding company for which group accounts are required, shall also report to the members on the group accounts.

(2) A report under subsection (1) shall be furnished by the auditor to the directors of the company in sufficient time to enable the company to comply with the requirements of subsection 344(1) in relation to that report.

(3) An auditor shall, in a report under this section, state —

(a) whether the accounts and, if the company is a holding company for which group accounts are required, the group accounts are, in his opinion, properly drawn up —

(i) so as to show fairly the matters required by section 340 to be dealt with in the accounts and, if there are group accounts, in the group accounts;

(ii) in accordance with the provisions of this Act; and

(iii) in accordance with any applicable accounting standard;

(b) if, in his opinion, the accounts, or, if the company is a holding company for which group accounts are required, the accounts or group accounts, have not been drawn up in accordance with a particular applicable approved accounting standard —

(i) whether, in his opinion, the accounts or group accounts, as the case may be, would, if drawn up in accordance with that accounting standard, have shown fairly the matters required by section 340 to be dealt with in the accounts or group accounts;

(ii) if, in his opinion, the accounts or group accounts, as the case may be, would not, if so drawn up, have shown fairly those matters - his reasons for being of that opinion;

(iii) if the directors have caused to be attached to the accounts or group accounts a statement under subsection 340(14) or (15), giving particulars of the effect on the accounts or group accounts of the failure so to draw up the accounts or group accounts - his opinion concerning the particulars; and

(iv) in a case to which neither subparagraph (ii) nor (iii) applies - particulars of the effect on the accounts or group accounts of the failure so to draw up the accounts or group accounts, as the case may be;

(c) whether the accounting records and other records and the registers required by the Act to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor, have been properly kept in accordance with any applicable law;

(d) in the case of group accounts —

(i) the names of the subsidiaries (if any) of which he has not acted as auditor;

(ii) where there are included in the group accounts (whether separately or consolidated with other accounts) the accounts and auditor's report of a subsidiary of which he has not acted as auditor and he has not examined those accounts and that auditor's report - the name of the subsidiary; and

(iii) where the auditor's report on the accounts of a subsidiary was made subject to a qualification or included comment made under subsection (4) - the name of the subsidiary and particulars of the qualification or comment;

(e) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which the matters dealt with by the accounts or group accounts would not be shown fairly; and

(f) if he is not satisfied as to a matter referred to in paragraph (a), (b), (c) or (d) - his reason for not being so satisfied.

(4) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

(a) whether he has obtained all the information and explanations that he required;

(b) whether proper accounting records and other records, including registers, have been kept by the company as required by this Act;

(c) whether the returns received from branch offices of the company are adequate;

(d) where the company is a holding company —

(i) whether the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts and whether he has received satisfactory information and explanations as required by him for that purpose; and

(ii) whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation;

(e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group - whether he agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts,

(5) The auditor shall state in his report particulars of any deficiency, failure or shortcoming in respect of a matter referred to in subsection (4).

(6) An auditor of a company has a right of access at all reasonable time to the accounting records and other records, including registers, of the company, and is entitled to require from any officer of the company such information and explanations as he desires for the purposes of audit.

(7) An auditor of a holding company for which group accounts are required has a right of access at all reasonable time to the accounting records and other records, including registers, of a subsidiary and is entitled to require from any officer or auditor of a subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.

(8) The auditor's report shall be attached to or endorsed on the accounts or group accounts and shall, if a member so requires, be read before the company at the annual general meeting, and is open to inspection by a member at any reasonable time.

(9) An auditor of a company or a person authorised by him in writing for the purpose is entitled —

(a) to attend a general meeting of the company and to receive all notices of, and other communications relating to, a general meeting that a member is entitled to receive;

(b) to be heard at a general meeting that he attends on any part of the business of the meeting that concerns the auditor in his capacity as auditor; and

(c) is entitled to be so heard notwithstanding that the auditor retires at that meeting or a resolution to remove him from office is passed at that meeting.

(10) If an auditor of a company becomes aware that the company has or the directors have made default in complying with section 305 or the provisions of section 345 relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Registrar by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Registrar a copy of them and of his report on them.

(11) Except in a case to which subsection (10) applies, if an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that —

(a) there has been a contravention of, or failure to comply with, a provision of this Act; and

(b) the circumstances are such that, in his opinion, the matter has not been or will not be adequately dealt with by comment in his report on the accounts or group accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any corporation of which the company is a subsidiary,

he shall forthwith report the matter to the Registrar by notice in writing.

(12) An auditor of a company or holding company who —

(a) is not satisfied that accounts of the company, or group accounts of the holding company, have been drawn up in accordance with a particular applicable approved accounting standard; or

(b) is of the opinion that accounts of the company, or group accounts of the holding company, have not been drawn up in accordance with a particular applicable approved accounting standard,

shall send to the Registrar, within 7 days after he furnishes to the directors of the company or holding company his report under this section on the accounts or group accounts, a copy of the report.

Obstruction of auditor

358. (1) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or of its holding company access, in accordance with the this Act, to the accounting records and other records, including registers, of the corporation in his custody or control, or to give information or an explanation as and when required under this Act or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence.

(2) An auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of a holding company of the corporation access, in accordance with this Act, to the accounting records and other records, including registers, of the corporation in his custody or control, or to give information or an explanation as and when required under this Act, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence.

Penalty: 100 penalty units or imprisonment or both.

Special provisions relating to borrowing and guarantor corporations

359. (1) The auditor of a borrowing corporation shall, within 7 days after furnishing the corporation or its members with a report, certificate or other document that he is required by this Act or by the debentures or trust deed to give to the corporation or its members, send to each trustee for the holders of debentures of the corporation a copy of the report, certificate or document, together with a copy of each document accompanying the report, certificate or document so furnished.

(2) Where, in the performance of his duties as auditor of a borrowing corporation or a guarantor corporation, an auditor becomes aware of some matter that, in his opinion, is or is likely to be prejudicial to the interests of the holders of debentures of the borrowing corporation and is relevant to the exercise and performance of the powers and duties imposed by this Act or by a trust deed on a trustee for the holders of the debentures, the auditor shall, within 7 days after becoming aware of the matter, send a report in writing on the matter to the corporation of which he is auditor and a copy of the report to the trustee.

PART 17 — SPECIAL INVESTIGATIONS

Interpretation and application

360. (1) In this Part, unless the contrary intention appears —

"company" means —

(a) a company as defined by section 6; and

(b) a foreign company that —

(i) has been or is registered under this Act or under the repealed laws; or

(ii) has carried on or is carrying on business in Norfolk Island;

"corporation" includes a corporation that is in the course of being wound up or has been dissolved;

"direction" means a direction to the Registrar under section 361 or 362 in relation to the carrying out of an investigation into affairs of a corporation;

"inspector" means an inspector appointed under this Part;

"officer", in relation to a corporation, means an officer as defined by section 6 and includes —

(a) a person who acts, or has at any time acted, as banker, solicitor or auditor, or in some other capacity, for the corporation;

(b) a person who is, or has at some time been, a provisional liquidator of the corporation;

(c) a person who —

(i) has, or has at any time had, in his possession property of the corporation;

(ii) is, or has at some time been, indebted to the corporation; or

(iii) is capable of giving information concerning affairs of the corporation; and

(d) where an inspector suspects or believes on reasonable grounds that a person is a person referred to in paragraph (c) - that person;

"prescribed direction" means a direction given —

(a) pursuant to subsection 361(4); or

(b) in the exercise of a power under subsection 362(1) otherwise than in response to a request made by the Registrar under subsection 362 (2).

(2) In this Part, a reference to a statement made at an examination includes a reference to a question asked, an answer given or other comment or remark made, at an examination.

(3) Where 2 or more inspectors have been appointed under this Part to investigate affairs of a corporation, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

(4) In relation to an investigation into affairs of a corporation carried out by the Registrar a reference in section 365, 366, 367, 368, 378, 383 or 384 to an inspector shall be read as a reference to the Registrar or to an authorised agent of the Registrar.

(5) The reference in subsection (4) to an authorised agent of the Registrar shall be read as a reference to a person who is authorised by the Registrar to act on behalf of the Registrar in connection with the investigation concerned.

(6) An investigation under this Part shall, for the purposes of a law relating to evidence, be deemed to be a legal proceeding.

Application for carrying out of investigation

361. (1) An application for an investigation to be carried out into —

(a) affairs of a corporation; or

(b) such particular affairs of a corporation as are specified in the application,

may be made in writing to the Minister.

(2) The application may be made —

(a) where the corporation has a share capital —

(i) by not less than 100 members of the corporation;

(ii) by members holding not less than one-twentieth of the issued shares in the corporation; or

(iii) by members holding not less than one-twentieth of the paid-up capital of the corporation;

(b) where the corporation does not have a share capital - by not less than one-twentieth of the members of the corporation;

(c) where the corporation has issued debentures - by the trustee for the holders of the debentures or by the holders of not less than one-twentieth in nominal value of the debentures; or

(d) by the corporation pursuant to a special resolution.

(3) Where an application is made under this section, the applicants shall —

(a) furnish such information in connection with the application as the Minister requires to enable him to determine whether it is in the public interest that an investigation should be carried out as sought; and

(b) where the Minister so requires - give to the Registrar security of such amount and in such manner as the Minister determines for payment of the expenses of and incidental to the investigation.

(4) Where an application is made under this section to the Minister and he is satisfied that it is in the public interest that the investigation should be carried out and that the applicants have complied with the provisions of this Part, the Minister shall, by instrument in writing, direct the Registrar to arrange for an investigation into the affairs, or into those particular affairs, of the corporation to which the application relates.

Investigations

362. (1) Where it appears to the Minister that it is in the public interest that an investigation be carried out into the affairs, or into particular affairs, of a corporation, he may, by instrument in writing, direct the Registrar to arrange for an investigation to be carried out accordingly.

(2) The Registrar may request the Minister in writing to exercise his powers under subsection (1) to direct the Registrar to arrange for an investigation into affairs of a corporation.

Conduct of investigation

363. (1) An instrument containing a prescribed direction —

(a) shall specify the matters that are to be investigated;

(b) may require the investigation to be carried out by the Registrar or by an inspector to be appointed by the Registrar; and

(c) in the case of an investigation that is to be carried out by an inspector appointed by the Registrar - may require a specified person to be appointed as the inspector and may require him to be appointed on specified terms and conditions.

(2) An instrument containing a direction other than a prescribed direction —

(a) shall specify the matters that are to be investigated; and

(b) may be accompanied by a statement in writing setting out the views of the Minister as to —

(i) the question whether the investigation should be carried out by Registrar or by an inspector appointed by Registrar; and

(ii) if the Registrar decides to appoint an inspector to carry out the investigation - the person who should be appointed and the terms and conditions of his appointment.

(3) Where the Registrar receives a direction, the Registrar shall —

(a) in the case of a prescribed direction - comply with any requirements specified in the direction; and

(b) in the case of any other direction —

(i) take into account any views expressed by the Minister in a statement accompanying the direction; and

(ii) if the Registrar decides to arrange for the investigation to which the direction relates to be carried out contrary to the wishes of the Minister - notify the Minister accordingly.

(4) Where the Registrar receives a direction, he shall —

(a) arrange for an investigation to be carried out into the matters specified in the instrument containing the direction; and

(b) subject to subsection (3) —

(i) decide whether the investigation is to be carried out by himself or by an inspector to be appointed by him; and

(ii) if he decides that the investigation should be carried out by an inspector - appoint the inspector on such terms and conditions as the Registrar determines.

(5) Where, pursuant to a direction, an investigation is being carried out the Registrar shall, if the Minister so directs before the completion of the investigation —

(a) arrange for the investigation to be extended to additional matters;

(b) terminate the investigation or terminate the investigation in so far as it relates to particular matters; or

(c) in the case of an investigation that is being carried out by an inspector - terminate, or vary the terms and conditions of, the appointment of the inspector.

(6) Where the Registrar is directed under this Part to arrange for an investigation into affairs of a corporation, the Registrar shall cause to be published in the Gazette a notice stating that the direction has been given and specifying the affairs concerned.

(7) A notice referred to in subsection (6) shall —

(a) if the investigation is being or is to be carried out by the Registrar - state that fact; or

(b) if the investigation is being or is to be carried out by an inspector - state that fact and specify the name of the inspector.

(8) Where the Registrar ceases to carry out an investigation or the appointment of an inspector to carry out an investigation is terminated, the Registrar shall cause notice of the cessation or termination to be published in the Gazette.

(9) A certificate by the Registrar stating that —

(a) an investigation under this Part into a matter specified in the certificate, being a matter relating to affairs of a corporation, is being or is to be carried out by the Registrar; or

(b) an investigation under this Part into a matter specified in the certificate, being a matter relating to affairs of a corporation, is being or is to be carried out by an inspector named in the certificate,

is evidence of the matters stated in the certificate and, in the case of an investigation by an inspector, that the inspector was duly appointed.

Investigation of affairs of related corporation

364. (1) Where the Registrar thinks it necessary, for the purposes of an investigation being carried out by him into affairs of a corporation, to investigate affairs of a corporation that is or has at some relevant time been related to the first-mentioned corporation, the Registrar may, with the consent in writing of the Minister, investigate the affairs of that related corporation or such of its affairs as the Minister specifies.

(2) Where an inspector appointed under this Part to investigate the affairs of a corporation thinks it necessary, for the purposes of the investigation, to investigate affairs of a corporation that is or has at some relevant time been related to the corporation, he may, with the consent in writing of the Minister, investigate the affairs of that related corporation or such of its affairs as the Minister specifies.

(3) Where —

(a) an investigation is carried out into affairs of a corporation pursuant to a direction; and

(b) an investigation under this section is carried out into affairs of a corporation that is related to the first-mentioned corporation,

the last-mentioned investigation shall be deemed, for the purposes of this Part, to be carried out pursuant to that direction.

Powers of inspectors

365. (1) An inspector may, by notice in writing containing the prescribed matters and given as prescribed, require an officer of a corporation affairs of which are being investigated under this Part —

(a) to produce to the inspector such books of the corporation and other books relating to the affairs of the corporation as are in the custody or under the control of the officer;

(b) to give to the inspector all reasonable assistance in connection with the investigation; and

(c) to appear before the inspector for examination on oath or affirmation and to answer questions put to him,

and may administer an oath or affirmation to that officer.

(2) A notice given pursuant to paragraph (1) (c) shall set out the provisions of subsections 366 (6) and (7).

(3) Where an inspector has reasonable grounds for believing that books in the custody or under the control of a person may be relevant to a matter relating to affairs of a corporation that are being investigated under this Part, the inspector may, by notice in writing containing the prescribed matters and given as prescribed, require that person to produce those books to the inspector.

(4) An inspector shall not exercise his powers under subsection (1) in respect of an officer of a corporation affairs of which he is investigating under section 364 unless he has furnished to the officer a certificate stating that he is investigating affairs of the corporation under that section and that the officer is an officer of the corporation.

(5) Where books are produced to an inspector under this Part, the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation and, during that period, he shall permit a person who would be entitled to inspect any of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

Examination of officers

366. (1) Where affairs of a corporation are being investigated under this Part, the following provisions of this section have effect.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made under section 365.

Penalty: 10 penalty units or imprisonment or both.

(3) An officer of the corporation shall not, in purported compliance with a requirement made under section 365, furnish information that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment or both.

(4) An officer of the corporation shall not, when appearing before an inspector for examination pursuant to paragraph 365(1)(c), make a statement that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment or both.

(5) An officer of the corporation shall not, when appearing before an inspector for examination pursuant to paragraph 365(1)(c), refuse or fail to take an oath or make an affirmation.

Penalty: 10 penalty units or imprisonment or both.

(6) A legal practitioner acting for an officer —

(a) may attend an examination of that officer; and

(b) may, at such times during the examination as the inspector allows —

(i) address the inspector; and

(ii) examine the officer,

in relation to matters in respect of which the inspector has questioned the officer.

(7) An officer is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where the officer claims, before answering the question, that the answer might tend to incriminate him, the answer is not admissible in evidence against him in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(8) A claim referred to in subsection (7) may be made in any form of words agreed between the officer and the inspector.

(9) A person who complies with a requirement of an inspector under section 365 does not incur a liability to a person by reason only of that compliance and, for the purposes of this subsection, a certificate under subsection 365(4) is conclusive evidence of the matters stated in that certificate.

(10) A person who is required to attend for examination pursuant to paragraph 365(1) (c) is entitled to the prescribed allowances and expenses.

(11) The Registrar may, in its discretion, pay, on account of the expenses incurred by a person in complying with a requirement under paragraph 365(1)(a) or (b), such amount as he thinks reasonable.

(12) Where, in the opinion of an inspector, a legal practitioner acting for an officer is attempting to obstruct the examination of the officer by the exercise of the rights conferred on him by subsection (6) to address the inspector or to examine the officer, the inspector may require the legal practitioner to cease to address him or to cease to examine the officer, as the case may be.

(13) Where an inspector makes a requirement of a legal practitioner under subsection (12), the legal practitioner shall not refuse or fail to comply with that requirement.

Officer failing to comply with requirement of this Part

367. (1) Where an inspector appointed to investigate affairs of a corporation is satisfied that an officer of a corporation or some other person has, without reasonable excuse, failed to comply with a requirement of the inspector made under section 365, the inspector may, by writing signed by him, certify the failure to the Court.

(2) The Court may inquire into the case and —

(a) order the officer or the person to comply with the requirement of the inspector within such period as the Court fixes; or

(b) if the Court is satisfied that the officer or the person failed, without reasonable excuse, to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of a contempt of the Court and, if it sees fit, also make an order pursuant to paragraph (a).

(3) The powers of the Court under this section may be exercised in relation to an officer or other person notwithstanding that the officer or person has been convicted of an offence in relation to the matters in respect of which the powers are to be exercised.

Record of examination

368. (1) An inspector may cause to be made a record of the statements made at an examination under this Part.

(2) Where such a record is in writing or is reduced to writing —

(a) the inspector may require the person who made the statements to read the record or have the record read to him and may require him to sign the record; and

(b) if the person requests the inspector in writing to furnish him with a copy of the written record, the inspector shall furnish the copy to the person without charge but subject to such conditions (if any) as the inspector imposes.

(3) A written record of the examination of a person that is signed by the person as mentioned subsection (2) or is authenticated in some other prescribed manner is evidence of the statements made at the examination.

(4) A person to whom a copy of a written record of an examination is given under paragraph (2) (b) and a person who comes into possession of the copy, or of a copy of the copy, shall comply with any conditions imposed by the inspector under that paragraph.

Penalty: 10 penalty units or imprisonment or both.

(5) This section does not affect the admissibility in criminal or civil proceedings of other evidence of the statements made at an examination under this Part.

(6) The Registrar may give a copy of a written record made of an examination under this Part and a copy of any related book to a legal practitioner who satisfies the Registrar that he is acting for a person who is conducting, or is, in good faith, contemplating, criminal or civil proceedings in respect of a matter into which an investigation has been or is being made by an inspector under this Part.

(7) A legal practitioner to whom a copy of a written record of an examination or of a related book is given under subsection (6) or some other person who comes into possession of the copy, or of a copy of the copy, shall not use the copy otherwise than in connection with the institution or preparation of, or in the course of, criminal or civil proceedings and shall not publish or communicate for some other purpose the copy of a part of the contents of the copy to some other person.

Penalty: 10 penalty units or imprisonment or both.

(8) The Registrar may, if he thinks fit, give a copy of a written record made of an examination under this Part and of any related book to some other person subject to such conditions as the Registrar imposes.

(9) A person to whom such a copy is given under subsection (8) and a person who comes into possession of the copy, or of a copy of the copy, shall comply with any conditions imposed by the Registrar under that subsection.

Penalty: 10 penalty units or imprisonment or both.

(10) When a final report is made in respect of an investigation under this Part, a record that has been made of statements made at an examination relating to the investigation shall be furnished with the report.

Admissibility of record of examination in evidence in proceedings against person examined

369. (1) Except as provided by subsection (2), statements made at an examination of a person under this Part are admissible in evidence in any criminal or civil proceedings against the person.

(2) Evidence of a statement so made by a person shall not be admitted in evidence in proceedings against the person if —

(a) the proceedings are criminal proceedings (other than proceedings for an offence against section 366 or other proceedings in respect of the falsity of the answer) and, before answering the question, the person claimed that the answer might tend to incriminate him;

(b) the statement is not relevant to the proceedings and the person objects to the admission of the evidence;(c) the statement is qualified or explained by some other statement made at the examination, evidence of the other statement is not tendered in the proceedings and the person objects to the admission of the evidence of the first-mentioned statement; or

(c) the statement disclosed matter in respect of which a claim of legal professional privilege could be made by the person in the proceedings if the provisions of this Part did not apply in relation to that evidence and the person objects to the admission of the evidence.

(3) This section applies whether the proceedings against the person examined are heard alone or together with proceedings against some other person.

Admissibility of record of examination in other proceedings

370. Where, in criminal or civil proceedings, direct evidence by a person of a matter would be admissible, a statement made by the person at an examination under this Part that tends to establish that matter is admissible in those proceedings as evidence of that matter —

(a) if it appears to the court concerned —

(i) that the person examined is dead or is unfit, by reason of physical or mental incapacity, to attend as a witness;

(ii) that the person is outside Norfolk Island and it is not reasonably practicable to secure his attendance; or

(iii)that all reasonable steps have been taken to find the person and he cannot be found; or

(b) in a case to which paragraph (a) does not apply - unless a party to the proceedings, other than the party tendering evidence of the question and answer, requires the tendering party to call the person as a witness in the proceedings and the tendering party does not call the person as a witness in the proceedings.

Weight of evidence

371. In ascertaining the weight (if any) to be attached to evidence of statements admitted under section 370 in any proceedings, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the evidence, including —

(a) the time when any relevant matter dealt with at the examination occurred; and

(b) the presence and nature, or the absence, of an incentive for the person examined to conceal or misrepresent a relevant matter in his statements.

Credibility of person who answered questions

372. (1) Where evidence of statements is admitted under section 370 and the person examined is not called as a witness in the proceedings, evidence is admissible where, if the person examined had been called as a witness, the evidence would have been admissible for the purpose of destroying or supporting his credibility.

(2) Evidence is admissible to show that a statement made by a person referred to in subsection (1) is inconsistent with some other statement made by him at any time.

(3) Notwithstanding subsections (1) and (2), evidence is not admissible of a matter of which, if the person referred to in subsection (1) had been called as a witness and had denied the matter in cross-examination, evidence would not be admissible if adduced by the cross-examining party.

Determination of objection to admissibility of question and answer

373. (1) A party to criminal or civil proceedings may, not later than 14 days before the commencement of the hearing of the proceedings, serve upon another party notice that the first-mentioned party proposes to tender as evidence in the proceedings the written record of an examination under this Part or of a specified part of such a record.

(2) The other party may, within 14 days after the service of the notice or within such longer period as is agreed by the parties or allowed by the court in which the proceedings are brought, give a notice to the tendering party stating that he objects to the admission in evidence of all or some of the statements contained in the written record or the part of the written record proposed to be tendered and, if he objects to the admission of some only of the statements, specifying the statements concerned.

(3) A notice under subsection (2) shall, in relation to each statement objected to, specify the grounds upon which the objection is taken.

(4) Upon receipt of a notice under subsection (2), the tendering party shall send a copy of the notice to the court in which the proceedings are brought.

(5) The court may, in its discretion, either determine the objections specified in the notice as a preliminary point of law before the commencement of the hearing of the proceedings or defer the determination of the objections until the hearing of the proceedings.

(6) At the hearing of the proceedings, a party is not entitled, without the leave of the court, to take an objection to the admission in evidence of the written record, or of a part of the written record, of an examination under this Part in respect of which a notice was given to him under subsection (1) if he could have objected to the tender of the written record or of that part of the written record by a notice under subsection (2) but did not do so.

Admissibility of certain evidence

374. Section 373 does not render inadmissible evidence that would have been admissible if that section had not been enacted.

Delegation by inspector

375. (1) An inspector may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers or functions under this Part other than this power of delegation.

(2) The power of delegation conferred by subsection (1) does not extend to delegating the power to administer oaths or affirmations or the power to examine on oath or affirmation.

(3) An act or thing done in the exercise of a power or the performance of a function by a person to whom that power or function has been delegated under subsection (1) has the same force and effect as if it had been done by the inspector.

(4) A delegate shall, at the request of an officer of a corporation, produce the instrument of delegation for inspection.

(5) A delegation under this section does not prevent the exercise or performance of a power or function by the inspector.

Reports of investigations

376. (1) Where an investigation is being carried out under this Part, the inspector may, and if so directed by the Registrar shall, make interim reports to the Minister, and, on the completion or termination of the investigation, the inspector shall report to the Minister his opinion on or in relation to the affairs of the corporation or corporations that he has investigated, together with the facts on which his opinion is based.

(2) Where an investigation is being carried out under this Part by the Registrar, the Registrar may, and if so directed by the Minister shall, make interim reports to the Minister and, on the completion or termination of the investigation, the Registrar shall report to the Minister his opinion on or in relation to the affairs of the corporation or corporations that he has investigated, together with the facts upon which his opinion is based.

Provisions relating to reports

377. (1) Subject to subsection (3), a copy of a final report prepared pursuant to section 376 shall, and a copy of the whole or a part of an interim report may, if the Registrar thinks fit, be sent by the Registrar to the registered office of the corporation to which the report relates, and a copy of a report so sent shall, at the request of an applicant under section 361, be furnished to him by the Registrar.

(2) Subject to subsections (3) and (4), the Registrar shall give a copy of a report made under this Part to each other person to whom, in the opinion of the Registrar, the report ought to be given by reason of its relation to affairs of that person to a material extent.

(3) The Registrar is not bound to furnish a corporation or other person with a copy of a part of a report made under this Part or with a complete copy of such a report if he is of the opinion that there is good reason for not divulging the contents of the part of the report or of the complete report.

(4) Subject to subsection (5), the Registrar shall not give a copy of a report under this Part to a person under subsection (2) if the Registrar believes that legal proceedings that have been, or that in his opinion might be, instituted might be unduly prejudiced by giving the report to that person.

(5) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or of a part of the report be given to that person.

(6) The Minister may cause to be printed and published the whole or a part of a report under this Part.

(7) If, from a report under this Part or from the record of an examination under this Part, it appears to the Registrar that an offence may have been committed by a person and that a prosecution ought to be instituted, the Registrar shall cause a prosecution to be instituted and prosecuted.

(8) Where it appears to the Registrar that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (7), require a person whom suspects or believes on reasonable grounds to be capable of giving information concerning a matter to which the prosecution relates (not being a person who is, or, in the opinion of the Registrar, is likely to be, a defendant in the proceedings or is or has been a legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(9) Where a person to whom a notice has been given under subsection (8) fails to comply with a requirement specified in the notice, the Supreme Court or the Court of Petty Sessions may, on the application of the Registrar, direct that person to comply with the requirement.

(10) If, from a report under this Part or from the record of an examination under this Part, the Registrar is of the opinion that proceedings ought in the public interest to be brought by a corporation for the recovery of damages in respect of fraud, negligence, default, breach of trust, breach of duty or other misconduct in connection with affairs of, or for the recovery of property of, the corporation, the Registrar may cause proceedings to be brought accordingly in the name of the corporation.

(11) A copy of a report of the Registrar or of an inspector under this Part purporting to be certified as such a report by the Registrar is admissible in civil proceedings as evidence of —

(a) the Registrar's or inspector’s report of his opinion for the purposes of paragraph (1)(g) or subparagraph (1)(c)(iv); and

(b) facts and matters stated in the report to have been found to exist by the inspector.

(12) This section does not affect the protection afforded to witnesses otherwise than under this Act.

Registrar's powers in respect of books

378. (1) An inspector may, when making a report under this Part, give to the Registrar books of which he has taken possession under subsection 365(5).

(2) The Registrar —

(a) may retain the books for such period as he considers to be necessary to enable a decision to be made whether legal proceedings ought to be instituted as a result of the investigation;

(b) may retain the books for such further period as he considers to be necessary to enable the proceedings to be instituted and prosecuted;

(c) may permit a person to inspect the books while they are in its possession; and

(d) may permit the use of the books for the purposes of legal proceedings instituted as a result of the investigation.

(3) Where the Registrar takes possession of books under subsection 365(5), he has such powers and obligations with respect to those books as he would have if he had been given those books by an inspector pursuant to subsection (1) of this section.

Privileged communications

379. (1) Where in the exercise of his powers under section 365 an inspector requires a legal practitioner to disclose a privileged communication made by or on behalf of or to that legal practitioner in his capacity as a legal practitioner, the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under official management or in the course of being wound up, the official manager or the liquidator, as the case may be, agrees to the legal practitioner complying with the requirement.

(2) Where the legal practitioner so refuses to comply with a requirement, he shall, if he knows the name and address of the person to whom or by or on behalf of whom the communication was made, forthwith furnish that name and address in writing to the inspector.

Penalty: 10 penalty units or imprisonment or both.

Expenses of investigation

380. (1) Subject to this section, the expenses of and incidental to an investigation under this Part shall be paid by the Administration.

(2) For the purposes of this section, the expenses of and incidental to such an investigation include the expenses incurred in proceedings brought in the name of a corporation under subsection 377(10).

(3) An inspector may include in his report a recommendation whether an order under subsection 381(1) or (2) should be made or whether orders under both those subsections should be made.

Registrar may order payment

381. (1) Where an investigation has been carried out under this Part and proceedings are instituted under subsection 377(10) or otherwise as a result of that investigation, the Registrar may make one or more of the following orders in writing:

(a) that a specified person pay, within the time and in the manner specified in the order, the whole, or a specified part, of the expenses of and incidental to the investigation;

(b) where expenses have been paid by the Administration, that a specified person reimburse the Administration, within the time and in the manner specified in the order, to the extent of the payment;

(c) that a specified person, within the time and in the manner specified in the order, pay, or reimburse the Administration in respect of, the whole, or a specified part, of the cost to the Administration of carrying out the investigation, including the remuneration of a person assisting the Registrar in connection with the investigation.

(2) Where the Registrar is of the opinion that the whole or a part of the expenses of and incidental to an investigation into affairs of a corporation under this Part should be paid by the corporation, the Registrar may, by order in writing, direct the corporation to pay a specified amount, being the whole or part of those expenses, within the time and in the manner specified.

(3) Where a person or corporation has failed to comply with an order of the Registrar under subsection (1) or (2), proceedings may be taken in a court of competent jurisdiction to recover the amount concerned as a debt due to the Administration.

Forfeiture of security

382. Where —

(a) pursuant to a direction given as a result of an application under subsection 361(1), the Registrar carried out an investigation, or an inspector was appointed to carry out an investigation, into affairs of a corporation;

(b) the applicants have given security in accordance with subsection 361(3); and

(c) the corporation fails to comply with an order under subsection 381(2),

the security may, in the discretion of the Registrar, be forfeited to the Administration or, if the amount that the corporation has failed to pay pursuant to an order is less than the amount of the security, a part of the security equal to the amount remaining unpaid may, in the discretion of the Registrar, be forfeited to the Administration.

Concealing, etc, of books

383. (1) A person shall not —

(a) conceal, destroy, mutilate or alter a book of or relating to a corporation affairs of which are the subject of investigation under this Part; or

(b) where such a book is in Norfolk Island - send the book out of Norfolk Island.

Penalty: 200 penalty units or imprisonment or both.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of the investigation.

Power of Registrar to make certain orders

384. (1) Where an investigation into affairs of a corporation is being made under this Part and it appears to the Registrar on reasonable grounds that facts concerning affairs of the corporation cannot be ascertained because an officer of the corporation has failed or refused to comply with a requirement of an inspector under section 365, the Registrar may, by instrument in writing published in the Gazette, make one or more of the following orders:

(a) an order restraining a specified person from disposing of any interest in specified securities of the corporation;

(b) an order restraining a specified person from acquiring any interest in specified securities of the corporation;

(c) an order restraining the exercise of any voting or other rights attached to specified securities of the corporation;

(d) an order directing a person who is registered as the holder of securities in respect of which an order under this section is in force to give notice in writing of that order to a person whom he knows to be entitled to exercise a right to vote attached to those securities;

(e) an order directing the corporation not to make payment, except in the course of winding up, of any sum due from the corporation in respect of specified securities of the corporation;

(f) an order directing the corporation not to register the transfer or transmission of specified securities of the corporation;

(g) an order directing the corporation not to issue shares to a person, being shares that were proposed to be issued to the person by reason of his holding securities of the corporation or pursuant to an offer or invitation made or issued to him by reason of his holding securities of the corporation.

(2) A copy of an order under subsection (1) and of an order by which it is varied or revoked shall be served —

(a) on each person affected by the order; and

(b) on the corporation.

(3) Where an order made under subsection (1) is in force, a person aggrieved by the order may apply to the Court for variation or revocation of the order and the Court may, if it is satisfied that it is just to do so, vary the order or revoke the order and any order by which it has been varied.

Offences in relation to orders

385. A person who contravenes or fails to comply with an order under subsection 384(1) is guilty of an offence and, where that person is a corporation, each officer of the corporation who is in default is also guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

Application for winding up

386. (1) Where a report of an investigation under this Part has been made by an inspector, the Registrar may apply to the Court —

(a) if the corporation the subject of the report was incorporated or is to be deemed to have been incorporated under this Act - for the winding up of the corporation; or

(b) if the corporation the subject of the report is a body to which Division 6 of Part 22 applies - for the winding up of the corporation in accordance with that Division.

(2) Upon the making of the application, the provisions of this Act, with such adaptations as are necessary, apply as if a winding up application had been filed with the Court by the corporation.

(3) A copy of an application by the Registrar under subsection (1) shall be served on the corporation to which it relates.

PART 18 — ARRANGEMENTS AND RECONSTRUCTIONS

Interpretation

387. In this Part —

"arrangement" includes a reorganisation of the share capital of a body corporate by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both of those methods;

"company" includes a foreign company registered in Norfolk Island.

Power to compromise with creditors and members

388. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application in a summary way of the company or of a creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors or of the members of the company or class of members to be convened in such manner and to be held in such place as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by paragraph 399(1)(a) to accompany notices of the meeting or meetings.

(2) The Court shall not make an order pursuant to an application under subsection (1) unless —

(a) 14 days notice of the hearing of the application, or such lesser period of notice as the Court or the Registrar allows, has been given to the Registrar; and

(b) the Court is satisfied that the Registrar has had a reasonable opportunity —

(i) to examine the terms of the proposed compromise or arrangement and a draft explanatory statement relating to the proposed compromise or arrangement; and

(ii) to make submissions to the Court in relation to the proposed compromise or arrangement and the draft explanatory statement.

(3) The draft explanatory statement referred to in subsection (2) is a draft of a statement —

(a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the directors of the company, whether as directors, as members or creditors of the company or otherwise, and the effect of those interests on the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) setting out the prescribed information and any other information that is material to the making of a decision by a creditor or member of the company whether to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the company and has not previously been disclosed to the creditors or members of the company.

(4) The Court shall not make an order under subsection (1) that a meeting be held outside Norfolk Island unless the Court is satisfied that —

(a) in the case of a meeting in respect of a proposed compromise or arrangement between the company and its creditors or any class of them - some or all of those creditors, or of the creditors included in that class, as the case may be, reside in or near the place where the meeting is to be held; or

(b) in the case of a meeting in respect of a proposed compromise or arrangement between the company and its members or any class of them - some or all of those members, or of the members included in that class, as the case may be, reside in or near the place where the meeting is to be held.

Compromise or arrangement binding in certain circumstances

389. A compromise or arrangement is binding on the creditors, or on a class of creditors, or on the members, or on a class of members, as the case may be, of the company and on the company or, if the company is in the course of being wound up, on the liquidator and contributories of the company, if,

(a) at a meeting convened in accordance with an order of the Court under subsection 388(1) —

(i) in the case of a compromise or arrangement between a company and its creditors or a class of creditors - the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the company amount in the aggregate to not less than 75% of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and

(ii) in the case of a compromise or arrangement between a company and its members or a class of members - the compromise or arrangement is agreed to by a majority in number of the members, or of the members included in that class of members, present and voting, either in person or by proxy, being, in the case of a company having a share capital, a majority whose shares have nominal values that amount, in the aggregate, to not less than 75% of the total of the nominal values of all the shares of the members present and voting in person or by proxy, or of the members included in that class present and voting in person or by proxy, as the case may be; and

(b) it is approved by order of the Court.

Two or more meetings

390. Where the Court orders 2 or more meetings of creditors or of a class of creditors, or 2 or more meetings of members or of a class of members, to be held in relation to a proposed compromise or arrangement, the meetings shall, for the purposes of section 389, be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

Approval of compromise or arrangement

391. The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

Disqualification of certain persons

392. (1) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Part between a company and its creditors or any class of them or between a company and its members or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person is —

(a) a mortgagee of property of the company;

(b) an auditor or officer of the company;

(c) an officer of corporation that is a mortgagee of property of the company; or

(d) a person who is not a registered liquidator.

(2) For the purposes of subsection (1), a person who —

(a) is an officer of a related corporation; or

(b) except where the Registrar, if he thinks fit in the circumstances, directs that this paragraph shall not apply in relation to the person - has at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related corporation.

(3) Paragraph (1)(d) does not prohibit the appointment to administer a compromise or arrangement of a corporation authorised by a law of Norfolk Island to administer a compromise or arrangement to which a company is a party.

Appointment under repealed laws

393. Subsection 392(1) does not disqualify a person from administering a compromise or arrangement pursuant to an appointment made under the repealed laws.

Application of other provisions

394. Where a person is or persons are appointed, whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, to administer the compromise or arrangement —

(a) sections 418, 419, 421, 425 and 427 apply in relation to that person or those persons as if —

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver, or as receivers, of the property of the company; and

(ii) a reference in any of those sections or subsections to a receiver, or to a receiver of the property, of a company were a reference to that person or to those persons; and

(b) section 523 applies in relation to that person or those persons as if —

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the company; and

(ii) a reference in that section to a liquidator were a reference to that person or to those persons.

Operation of Court order

395. An order of the Court made for the purposes of paragraph 389(b) does not have any effect until an office copy of the order is lodged with the Registrar, and upon being so lodged, notwithstanding subsection 100(5), the order takes effect, or shall be deemed to have taken effect, from and including the date of lodgment or such earlier date as the Court specifies in the order.

Annexure of order to constituent documents

396. (1) Subject to subsection (2), a copy of each order of the Court made for the purposes of paragraph 389(b) shall be annexed to each copy of the memorandum of the company issued after the order is made or, in the case of a company not having a memorandum, to each copy so issued of the constituent documents of the company.

(2) The Court may, by order, exempt a company from compliance with the requirements of subsection (1) or determine the period during which the company shall comply with those requirements.

(3) A company that makes default in complying with subsection (1) and any officer of the company who is in default are each guilty of an offence.

Directors to arrange for reports

397. (1) Where a compromise or arrangement referred to in subsection 388(1) (whether or not 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 shall —

(a) if a meeting of the members of the company by resolution so directs - instructsuch accountants or legal practitioners, or both, as are named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and

(b) if a report is or reports are obtained pursuant to paragraph (a) - make the report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least 7 days before the date of any meeting ordered by the Court to be convened as provided by subsection 388(1).

(2) If default is made in complying with subsection (1), each director of the company is guilty of an offence.

Court may restrain proceedings

398. Where a order has not been made or resolution passed for the winding up of a company and a compromise or arrangement has been proposed between the company and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the company or of a member or creditor of the company, restrain further proceedings in an action or other civil proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

Information as to compromise with creditors or members

399. (1) Where a meeting is convened under section 388, the company shall —

(a) with each notice convening the meeting that is sent to a creditor or member, send a statement (in this section referred to as "the explanatory statement") —

(i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors, whether as directors, as members or creditors of the company or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(ii) setting out the prescribed information and any other information that is material to the making of a decision by a creditor or member whether to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members; and

(b) in each notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the explanatory statement.

(2) Paragraph (1)(a) does not apply to a creditor whose debt does not exceed $200 unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the company shall forthwith comply with it.

(3) Where the compromise or arrangement affects the rights of debenture holders, the explanatory statement shall specify any material interests of the trustee for the debenture holders, whether as such a trustee, as a member or creditor of the company or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

(4) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, a creditor or member entitled to attend the meeting shall, on making application in that manner, be furnished by the company free of charge with a copy of the explanatory statement.

(5) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as are required to be included in the explanatory statement.

(6) In the case of a compromise or arrangement that is not, or does not include, a compromise or arrangement between a company and its creditors or any class of them, the company shall not send out an explanatory statement pursuant to subsection (1) unless a copy of that statement has been registered by the Registrar.

(7) Where an explanatory statement is not required to be so registered, the Court shall not make an order approving the compromise or arrangement unless it is satisfied that the Registrar has had a reasonable opportunity to examine the statement and to make submissions to the Court in relation to it.

(8) Where a copy of a statement is lodged with the Registrar for registration under subsection (6), the Registrar shall not register the copy unless the statement appears to comply with the requirements of this Part and the Registrar is satisfied that the statement does not contain matter that is, in a material particular, false or, in the form or context in which it appears, misleading.

(9) Subject to subsection (11), where a company contravenes or fails to comply with a requirement of this section, the company and any officer of the company who is in default are each guilty of an offence.

(10) For the purposes of subsection (9), the liquidator of a company or a trustee for debenture holders shall be deemed to be an officer of the company.

(11) It is a defence to a prosecution for an offence against subsection (9) if the defendant proves that the default in complying with the requirement was due to the refusal of some other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

Provisions for facilitating reconstruction and amalgamation of corporations

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

(a) the transfer to the transferee company of the whole or a part of the undertaking and of the property or liabilities of the transferor corporation;

(b) the allotting or appropriation by the transferee company of shares, debentures or other interests in that company that, under the compromise or arrangement, are to be allotted or appropriated by that company to or for a person;

(c) the continuation by or against the transferee company of legal proceedings pending by or against the transferor corporation;

(d) if the transferor corporation is a company - the dissolution, without winding up, of the transferor corporation;

(e) the provision to be made for persons who, within such time and in such manner as the Court allows, dissent from the compromise or arrangement;

(f) the transfer or allotment of an interest in property to a person concerned in the compromise or arrangement;

(g) such incidental, consequential or supplementary matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(2) The order is effective to transfer the property or liabilities and in the case of a particular property if the order so directs, free from any charge that is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, each corporation to which the order relates shall, within 14 days after the making of the order, lodge with the Registrar an office copy of the order.

(4) In this section —

"company" does not include a company other than a company as defined by section 6;

"liabilities" includes duties of any description, including duties that are of a personal nature or are incapable under the law of Norfolk Island of being assigned or performed vicariously;

"property" includes rights and powers of any description, including rights and powers that are of a personal nature and are incapable under the law of Norfolk Island of being assigned or performed vicariously.

Acquisition of shares of dissenting shareholders

401. (1) Where a scheme or contract that involves a transfer of the shares included in a class of shares in a company (in this section referred to as "the transferor company") to a person (in this section referred to as "the transferee") has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of not less than 90% in nominal value of the shares included in that class of shares (other than prescribed shares), the transferee may at any time within 2 months after the offer has been so approved give notice as prescribed to a dissenting shareholder that he desires to acquire the shares of that shareholder.

(2) The transferee is, unless on an application made by a dissenting shareholder within one month after the date on which the notice was given or within 14 days after a statement was supplied to a dissenting shareholder pursuant to subsection (6) (whichever is the later) the Court orders otherwise, entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(3) Where the shares in a company are not divided into classes, those shares shall be deemed to constitute a class.

(4) Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the expiration of one month after the date on which the notice was given under subsection (1) or 14 days after the date on which a statement was supplied pursuant to subsection (6) (whichever is the later) which of those terms he prefers and, if the dissenting shareholder fails to make the election within the time allowed by this subsection, the transferee may, unless the Court otherwise orders, determine which of those terms are to apply to the acquisition of the shares of the dissenting shareholder.

(5) Notwithstanding anything in subsection (2) or (4), where the nominal value of prescribed shares exceeds 10% of the aggregate nominal value of the prescribed shares and the shares (other than prescribed shares) to be transferred under the scheme or contract, the provisions of subsections (2) and (4) do not apply unless —

(a) the transferee offers the same terms to all holders of the shares (other than prescribed shares) to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract, besides holding not less than 90% in nominal value of the shares (other than prescribed shares) to be transferred under the scheme or contract, are not less than 75% in number of the holders of those shares.

(6) Where the transferee has given notice to a dissenting shareholder that he desires to acquire that shareholder's shares, that shareholder is entitled to require the transferee, by a demand in writing served on the transferee within one month after the date on which the notice was given, to furnish to him a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

(7) Where, pursuant to a scheme or contract referred to in subsection (1), the transferee becomes beneficially entitled to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a company, a corporation that is related to the transferee is beneficially entitled, comprise or include 90% in nominal value of the shares included in the class of shares concerned, then —

(a) the transferee shall, within one month after the date on which he becomes beneficially entitled to those shares (unless in relation to the scheme or contract he has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under subsection (1); and

(b) such a holder may, within 3 months after the giving of the notice to him, by notice to the transferee, require the transferee to acquire his shares and, where alternative terms were offered to the approving shareholders, elect which of those terms he will accept.

(8) Where a shareholder has given notice under paragraph (7) (b) with respect to his shares, the transferee is entitled and bound to acquire those shares —

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to those shareholders, on the terms for which the shareholder elected, or where he has not elected, for whichever of the terms the transferee determines; or

(b) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, orders.

(9) Where a notice has been given by the transferee under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee shall, within 14 days after —

(a) the expiration of one month after the date on which the notice was given;

(b) the expiration of 14 days after a statement under subsection (6) was supplied; or

(c) where an application was made to the Court by a dissenting shareholder, the application was disposed of,

whichever last happens, send a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee and, on his own behalf, by the transferee, and pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that, by virtue of this section, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

(10) In this section —

"dissenting shareholder" means a shareholder who has not assented to the scheme or contract and a shareholder who has failed or refused to transfer his shares to the transferee in accordance with the scheme or contract;

"prescribed shares", in relation to a scheme or contract involving a transfer of the shares included in a class of shares in a company, means shares included in that class of shares that, at the time of the making of the offer relating to the scheme or contract, are held by the transferee, a nominee of the transferee or, where the transferee is a company, a subsidiary of the company.

Consideration to be held in trust

402. (1) All sums received by a transferor company under section 401 shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

(2) Where a sum or other property is held in trust by a company for a person under this section or under a corresponding provision of the repealed laws and has been so held for not less than 2 years, the company shall, before the expiration of 10 years after the date on which the sum was paid or the consideration was allotted or transferred to the company, pay the sum or transfer the consideration, and any accretions to it and any property that has become substituted for it or for part of it, to the Administration.

(3) The Administration shall sell or dispose of property transferred to it under this section or under a corresponding provision of the repealed laws and any property that becomes substituted for it that the Administration comes to hold in right of property other than cash received under subsection (2) as the Minister thinks fit and shall deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to it in respect of shares in a corporation as prescribed.

(4) Where property transferred to the Administration under this section or under a corresponding provision of the repealed laws includes shares in a corporation, the Administration is not subject to an obligation —

(a) to pay calls;

(b) to make a contribution to the debts and liabilities of the corporation;

(c) to discharge any other liability; or

(d) to do any other act or thing,

in respect of the shares, whether the obligation arises before or after the date of the transfer, but this subsection does affect the right of a corporation to forfeit a share.

(5) The Administration is not liable for loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on the Administration under this section or that the Administration has in relation to property transferred to it under this section or property that becomes substituted for the whole or any part of that property.

Notification of appointment of scheme manager

403. Where a person is appointed to administer a compromise or arrangement that has been approved under this Part, he shall, within 14 days after he is appointed, lodge with the Registrar a notice in writing of his appointment.

Court may require report

404. Where an application is made to the Court under this Part in relation to a proposed compromise or arrangement, the Court may —

(a) before making an order on the application, require the Registrar or some other person specified by the Court to give to the Court a report as to the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed, the conduct of the officers of the corporation or corporations concerned and any other matters that, in the opinion of the Registrar or of that person, ought to be brought to the attention of the Court;

(b) in deciding the application, have regard to the report; and

(c) make such order as to the payment of the costs of preparing and giving the report as the Court thinks just.

PART 19 — OPPRESSIVE OR UNJUST CONDUCT

Remedy in cases of oppression or injustice

405. (1) An application to the Court for an order under this section in relation to a company may be made —

(a) by a member who believes —

(i) that affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is contrary to the interests of the members as a whole; or

(ii) that an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole; or

(b) by the Registrar where the Registrar has received a report by an inspector under Part 17.

(2) If the Court is satisfied —

(a) that affairs of a company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section referred to as "the oppressed member or members") or in a manner that is contrary to the interests of the members as a whole; or

(b) that an act or omission, or a proposed act or omission, by or on behalf of a company, or a resolution, or a proposed resolution, of a class of members of a company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section also referred to as "the oppressed member or members") or was or would be contrary to the interests of the members as a whole,

the Court may, subject to subsection (4), make such order as is just, including, but without limiting the generality of the foregoing, one or more of the following:

(c) an order that the company be wound up;

(d) an order for regulating the future conduct of affairs of the company;

(e) an order for the purchase of the shares of a member by other members;

(f) an order for the purchase of the shares of a member by the company and for the reduction accordingly of the company's capital;

(g) an order directing the company to institute, prosecute, defend or discontinue specified proceedings or authorising a member of the company to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;

(h) an order appointing a receiver or a manager of property of the company;

(i) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;

(j) an order requiring a person to do a specified act or thing.

(3) A person who contravenes or fails to comply with an order made under subsection (2) that is applicable to him is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(4) The Court shall not make an order under subsection (2) for the winding up of a company unless it is satisfied that the winding up of the company would not unfairly prejudice the oppressed member or members.

(5) In this section and in paragraphs 468(1)(f), (g) and (h) —

(a) a reference to a member, in relation to a company, includes, in the case of a company limited by shares, or a company limited both by shares and by guarantee, a reference to a person to whom a share in the company has been transmitted by will or by operation of law;

(b) a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in his capacity as a member or in some other capacity; and

(c) a reference to an act or omission by or on behalf of a company or a resolution of a class of members of the company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to an act or omission by or on behalf of a company or a resolution of a class of members of the company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in his capacity as a member or in any other capacity.

(6) Where an order that a company be wound up is made under this section, the provisions of this Act relating to the winding up of companies apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the Court by the company.

(7) Where an order under this section makes an alteration of or addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company does not have power, except with the leave of the Court, to make any further alteration in or addition to the memorandum articles inconsistent with the provisions of the order but, subject to the foregoing provisions of this subsection, the alteration or addition has effect as if it had been duly made by resolution of the company.

(8) An office copy of any order made under this section pursuant to an application by a member of a company shall be lodged by the with the Registrar within 14 days after the making of the order.

(9) If default is made in complying with subsection (8), the applicant is guilty of an offence.

PART 20 — RECEIVERS AND MANAGERS

Application of Part

406. The application of this Part extends to and in relation to foreign companies registered in Norfolk Island and to and in relation to receivers or managers of the property of such companies.

Interpretation

407. (1) In this Part, unless the contrary intention appears —

(a) a reference to a receiver, in relation to property of a corporation, includes a reference to a manager of property of a corporation;

(b) a reference to property of a company (not being a registered foreign company) shall be read as a reference to property of the company within or outside Norfolk Island;

(c) a reference to property of a registered foreign company shall be read as a reference to property of the company in Norfolk Island;

(d) a reference to property of a corporation shall —

(i) in the case of a corporation that is a company - be read as a reference to property of the company within or outside Norfolk Island;

(ii) in the case of a corporation that is a registered foreign company - be read as a reference to property of the company in Norfolk Island.

(2) In this Part, unless the contrary intention appears "officer", in relation to a registered foreign company, includes a person who is the agent of the company as defined in Part 25.

Power to appoint receiver void in certain cases

408. (1) Subject to subsection (2), where —

(a) a company or registered foreign company creates a charge on property of the company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and

(b) within 6 months after creating the charge, the company commences to be wound up,

the charge is, and shall be deemed always to have been, invalid to the extent that it purports to confer on a person power to appoint a receiver of property of the company.

(2) Where the Court is satisfied that —

(a) immediately after the creation of a charge, the company that created the charge was solvent; and

(b) in all the circumstances of the case, it is just to make an order under this subsection in relation to the charge, the Court may, on the application of a person interested and on such terms and conditions as are just, make an order declaring that subsection (3) does not apply, and shall be deemed never to have applied, in relation to the charge and, where the Court makes such an order, the order has effect accordingly.

(3) In this section, "relevant person", in relation to a charge created by a company or registered foreign company, means —

(a) a person who was at the time when the charge was created, or has been at any time during the period of 6 months ending at that time, an officer of the company; or

(b) a person associated with a person of a kind referred to in paragraph (a).

Disqualification for appointment as receiver

409. (1) None of the following persons is qualified to be appointed, or shall act, as receiver of property of a company:

(a) a mortgagee of property of the company;

(b) an auditor or an officer of the company;

(c) an officer of a corporation that is a mortgagee of property of the company;

(d) a person who is not a registered liquidator.

(2) Subject to subsection (6), none of the following persons shall act as receiver of property of a corporation:

(a) a mortgagee of property of the corporation;

(b) an auditor or an officer of the corporation;

(c) an officer of a corporation that is a mortgagee of property of the corporation;

(d) a person who is not a registered liquidator.

(3) For the purposes of subsection (1) or (2), a person shall be deemed to be an officer of a company or of a corporation if —

(a) he is an officer of a related corporation; or

(b) except where the Registrar, if he thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him - he has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or corporation or of a related corporation.

(4) A reference in this section to an officer of a company or of a corporation does not include a reference to a person who is a receiver of property of the company or corporation and was appointed under an instrument.

(5) Paragraph (1)(d) does not apply to a corporation authorised by an enactment to act as receiver of property of a company.

(6) This section does not disqualify a person from acting as receiver of property of a company under an appointment validly made before the commencement of this Act.

Liability of receiver

410. (1) A receiver, or other authorised person, who, whether as agent for the corporation concerned or not, enters into possession or assumes control of property of a corporation for the purpose of enforcing a charge is, notwithstanding any agreement to the contrary but without prejudice to his rights against the corporation or some other person, liable for debts incurred by him in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) In a civil proceeding arising out of an act alleged to have been done by a person who has entered into possession or has assumed control of property of a corporation, being a person who purports to be properly appointed as a receiver in respect of that property under powers contained in a charge but was not so appointed, the court concerned may, if it is satisfied that the person believed on reasonable grounds that he had been properly appointed as receiver, order that —

(a) the person be relieved in whole or in part of a liability incurred by him that he would not have incurred if he had been properly appointed; and

(b) a person who purported to appoint as receiver the person entering into possession or assuming control be liable for an act done by the person entering into possession or assuming control to the extent that the person entering into possession or assuming control in control has been relieved of liability as mentioned in paragraph (a).

Powers of receiver

411. (1) Subject to this section, a receiver of property of a corporation has power to do, in Norfolk Island and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which he was appointed.

(2) Without limiting the generality of subsection (1), but subject to any provision of the order by which, or the instrument under which, he was appointed, being a provision that limits his powers in any way, a receiver of property of a corporation has, in addition to any powers conferred on him by that order or instrument, as the case may be, or by law, power, for the purpose of attaining the objectives for which he was appointed, to do any or all of the following:

(a) to enter into possession and take control of property of the corporation in accordance with the terms of that order or instrument;

(b) to lease, let on hire or dispose of property of the corporation;

(c) to grant options over property of the corporation on such conditions as he thinks fit;

(d) to borrow money on the security of property of the corporation;

(e) to insure property of the corporation;

(f) to repair, renew or enlarge property of the corporation;

(g) to convert property of the corporation into money;

(h) to carry on any business of the corporation;

(i) to take on lease or on hire, or to acquire, property necessary or convenient in connection with the carrying on of a business of the corporation;

(j) to execute a document, bring or defend proceedings or do any other act or thing in the name of and on behalf of the corporation;

(k) to draw, accept, make and endorse a bill of exchange or promissory note;

(l) to use a seal of the corporation;

(m) to engage or discharge employees on behalf of the corporation;

(n) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver;

(o) to appoint an agent to do any business that the receiver is unable to do himself or that can more conveniently be done by an agent;

(p) where a debt or liability is owed to the corporation - to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;

(q) where the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the corporation —

(i) in the name of the corporation, to make a call in respect of money unpaid on shares in the corporation (whether on account of the nominal value of the shares or by way of premium); or

(ii) upon the giving of a proper indemnity to a liquidator of the corporation - in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the corporation;

(r) to enforce payment of a call that is due and unpaid, whether the call was made by the receiver or otherwise;

(s) to make or defend an application for the winding up of the corporation;

(t) to refer to arbitration a question affecting the corporation.

(3) The conferring by this section on a receiver of powers in relation to property of a corporation does not affect any rights in relation to that property of some person other than the corporation.

(4) In this section, a reference, in relation to a receiver, to property of a corporation is, unless the contrary intention appears, a reference to the property of the corporation in relation to which the receiver was appointed.

Duties of receiver with respect to bank accounts and accounting records

412. (1) A receiver of property of a corporation shall —

(a) open and maintain a bank account bearing his own name, the words "Receiver of" and the name of the corporation;

(b) within 3 business days after money of the corporation comes under his control, pay that money into the account;

(c) ensure that the account does not contain moneys other than the moneys of the corporation that come under his control; and

(d) keep such accounting records as correctly record and explain all transactions entered into by him as receiver.

(2) A receiver who contravenes or fails to comply with subsection (1) is guilty of an offence.

(3) A director, creditor or member of a corporation may, unless the Court otherwise orders, personally or by his agent, inspect records kept by a receiver of property of the corporation referred to in of paragraph (1)(d).

Reports by receiver

413. (1) If it appears to the receiver of property of a company that —

(a) a past or present officer, or a member, of the company may have been guilty of an offence in relation to the company under the law of Norfolk Island, of a State or of a Territory other than Norfolk Island;

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the company —

(i) may have misapplied or retained, or may have become liable or accountable for, money or property (whether the property is within or outside Norfolk Island of the company; or

(ii) may have been guilty of negligence, default, breach of duty or breath of trust in relation to the company,

the receiver shall —

(c) forthwith report the matter to the Registrar; and

(d) furnish the Registrar with such information, and give to him such access to and facilities for inspecting and taking copies of documents, as the Registrar requires.

(2) The receiver may also, if he thinks fit, lodge with the Registrar further reports specifying any other matter that, in his opinion, should be brought to the notice of the Registrar.

Court may direct Receiver to make report

414. If it appears to the Court —

(a) that a past or present officer or a member of a company has, in respect of property of which a receiver has been appointed, been guilty of an offence under a law referred to in paragraph 413(1)(a) in relation to the company; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding up of a company or registered foreign company has, in respect of property of which a receiver, been appointed, engaged in conduct referred to in paragraph 413(1)(b) in relation to the company,

and that the receiver has not made a report to the Registrar with respect to the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to make the report.

Prosecution of delinquent officers and members

415. (1) Where a report is made under section 414, the Registrar may, if he thinks fit, investigate the matter.

(2) Where the Registrar decides to institute a prosecution against a person following a report to him under section 414, the Registrar may, by notice in writing given before or after the institution of the prosecution, require an officer of the company to which the matter reported to the Registrar relates (not being an officer who is, or, in the opinion of the Registrar, is likely to be, a defendant in the proceedings or is or has been a legal practitioner acting for such a person) to give all such assistance in connection with the prosecution or proposed prosecution as he is reasonably able to give.

(3) Where a person is required pursuant to subsection (2) to give assistance in connection with a prosecution or proposed prosecution, the person shall not —

(a) without reasonable excuse, refuse or fail to comply with the requirement; or

(b) in purported compliance with the requirement, furnish information or make a statement that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment or both.

(4) A person is not excused from furnishing information pursuant to a requirement under subsection (2) on the ground that the information might tend to incriminate him but, where the person claims before furnishing information that the information might tend to incriminate him, the information is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(5) For the purposes of subsection (2), "officer" in relation to a company, means a person who is an officer of the company as defined in section 6 and includes —

(a) a person who has at any time been an officer of the company as defined in that section or in the corresponding provision of the repealed laws;

(b) in relation to a registered foreign company - a person who is, or has at any time been, an agent of the registered foreign company as defined in Part 25 or in the corresponding provisions of the repealed laws; and

(c) a person who acts, or has at any time acted, as banker, solicitor, auditor or in some other capacity for the company.

Supervision of receivers

416. (1) If —

(a) it appears to the Court or to the Registrar that a receiver of property of a corporation has not faithfully performed or is not faithfully performing his duties or has not observed or is not observing —

(i) a requirement of the order by which, or the instrument under which, he was appointed;

(ii) a requirement of the Court; or

(iii) a requirement of this Act, of the regulations or of the rules; or

(b) a complaint is made to the Court or to the Registrar with respect to the conduct of a receiver of property of a corporation in connection with the performance of his duties,

the Court or the Registrar, as the case may be, may inquire into the matter and, where the Court or Registrar so inquires, the Court may make such order as is just.

(2) The Registrar may report to the Court any matter that, in his opinion, is a misfeasance, neglect or omission on the part of the receiver and the Court may order the receiver to make good any loss that the estate of the corporation has sustained thereby and may make such other order as is just.

(3) The Court may at any time require a receiver of property of a corporation to answer an inquiry in relation to the performance of his duties as receiver and may examine him or any other person on oath or affirmation concerning the performance of the receiver's duties and may direct an investigation to be made of the books of the receiver.

Application for directions

417. A receiver of property of a company appointed under the powers contained in an instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

Power of Court to fix remuneration of receivers

418. (1) The Court may, on application by the liquidator or the official manager of a company or registered foreign company or by the Registrar, fix the amount to be paid by way of remuneration to a person who, under the powers contained in an instrument, has been appointed as receiver of property of the company.

(2) The power of the Court under this section —

(a) extends to fixing the remuneration for a period before the making of the order;

(b) is exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application for the order; and

(c) where the receiver has been paid or has retained for his remuneration for a period before the making of the order an amount in excess of that fixed in respect of that period - extends to requiring him or his personal representative to account for the excess or for such part of the excess as is specified in the order.

(3) The power conferred by paragraph (2)(c) shall not be exercised in respect of a period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances that make it just for the power to be so exercised.

(4) The Court may from time to time, on an application made by the liquidator, the official manager, the receiver or the Registrar, vary or amend an order made under this section.

Receiver to enjoy qualified privilege in certain circumstances

419. (1) A receiver of property of a corporation is not, in the absence of malice on his part, liable to an action for defamation at the suit of a person in respect of matter contained in a report made by him pursuant to section 414 or in comments made by him pursuant to paragraph 422(1)(c).

(2) This section does not affect any other right, privilege or immunity that a receiver of property of a corporation or some other person has as defendant in an action for defamation.

Notification of appointment of receiver

420. (1) Where a person obtains an order for the appointment of a receiver of property of a company, or appoints such a receiver under a power contained in an instrument, he shall, within 7 days after obtaining the order or making the appointment, lodge notice of the fact with the Registrar.

(2) A person who has been appointed as a receiver of property of a company shall, within 14 days after the date of his appointment, lodge with the Registrar notice of the address of his office and, in the event of a change in the situation of his office, shall, within 14 days after the change, lodge with the Registrar notice of the change.

(3) Where a person appointed as receiver of property of a company under the powers contained in an instrument ceases to act as such, he shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact.

Statement that receiver appointed

421. (1) Where a receiver of property of a corporation (whether the property is within Norfolk Island or not) has been appointed, in each business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the corporation, there shall be set out after the name of the corporation where it first appears a statement that a receiver has, or a receiver and a manager have, as the case may be, been appointed.

(2) If default is made in complying with this section, the corporation, any officer or liquidator of the corporation who is in default and any receiver of property of the corporation who is in default, are each guilty of an offence.

Penalty: 10 penalty units.

Provisions as to information where receiver appointed

422. (1) Where a receiver of property of a company or registered foreign company is appointed —

(a) the receiver shall forthwith serve on the company notice of his appointment;

(b) the persons who were the directors and the secretary of the company or, in the case of registered foreign company, the person who was the agent of company, at the date of the receiver's appointment shall, within 14 days after the receipt of the notice, make out and submit to the receiver a report as to the affairs of the company as at the date of the appointment; and

(c) the receiver shall, within one month after receipt of the report —

(i) lodge with the Registrar a copy of the report and a notice setting out any comments he sees fit to make relating to the report or, if he does not see fit to make any comment, a notice stating that he does not see fit to make any comment;

(ii) send to the company a copy of the notice; and

(iii) where the receiver is appointed by or on behalf of the holders of debentures of the company, send to the trustees (if any) for those holders a copy of the report and of the notice.

(2) Where notice has been served on a company under paragraph (1)(a), the persons who were the directors and secretary of the company, or, in the case of a registered foreign company, the person who was the agent of the company, at the date of the receiver's appointment may, whether before or after the expiration of the period specified in paragraph (1)(b) for the submission of the report, apply to the receiver or to the Court for an extension of the period within which the report is to be submitted.

(3) Where —

(a) application is made to the receiver - if the receiver believes that there are special reasons for so doing, he may, by notice in writing to those persons or that person, as the case may be, extend that period until a specified date; or

(b) application is made to the Court - if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified date.

(4) Where, under subsection (3), the persons who were, at the date of the receiver's appointment, the directors and the secretary of a company are or, in the case of a registered foreign company, the person who was, at the date of the receiver's appointment, the agent of the foreign company, is granted an extension of the period within which a report as to the affairs of the company or foreign company, as the case may be, is to be submitted —

(a) where the extension was granted by the receiver - the receiver shall forthwith lodge with the Registrar a copy of the notice given by him to those persons or to that person, as the case may be; or

(b) where the extension was granted by the Court - the persons or person to whom an extension is granted shall forthwith lodge with the Registrar a copy of the order of the Court.

(5) Subsections (1), (2), (3) and (4) do not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where subsections (1) applies to a receiver who has died or has ceased to act before that subsection has been fully complied with, the references in paragraphs (1)(b) and (c) and subsections (3) and (4) to the receiver (other than the first such reference in paragraph (1)(b) and subsection (3) and the first and second such references in subsection (4)) shall, subject to subsection (6), be read as including references to his successor and to any continuing receiver.

(6) Where the company is being wound up, this section and section 423 apply, with any necessary modifications, notwithstanding that the receiver and the liquidator are the same person.

Receiver may require reports

423. (1) A receiver of property of a company may, by notice served personally or by post addressed to the last known address of the person, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing, and submit to him, a report, containing such information as is specified in the notice as to the affairs of the company or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

(a) persons who are or have been officers of the company;

(b) where the company was formed within one year before the date of the receiver's appointment - persons who took part in the formation of the company;

(c) persons who are in the employment of the company or were in the employment of the company within one year before the date of the receiver's appointment and are, in the opinion of the receiver, capable of giving the information required;

(d) persons who are, or were within one year before the date of the receiver's appointment, officers of, or in the employment of, a corporation that is, or within that year was, an officer of the company to the affairs of which the report relates.

(2) The receiver may, in a notice under subsection (1), specify the information that he requires by reference to information required by this Act or the Regulations to be included in some other report, statement or notice under this Act.

(3) A person who makes and verifies a report as required by subsection (1) shall, subject to the regulations, be allowed, and shall be paid by the receiver (or his successor) out of his receipts, his reasonable costs and expenses incurred in and about the preparation and making of the report and the verification of the report.

(4) A person who fails to comply with a requirement made under subsection (1) is guilty of an offence.

(5) A reference in this section to the receiver's successor shall be read as including a reference to a continuing receiver and a reference to a company includes a reference to a registered foreign company.

Receiver may inspect books

424. A receiver of property of a corporation is entitled to inspect at any reasonable time books of the corporation that relate to that property and a person who refuses or fails to allow the receiver to inspect books accordingly is guilty of an offence.

Accounts of receivers

425. (1) A receiver of property of a company or of a registered foreign company shall, within one month after the expiration of the period of 6 months or such lesser period as the receiver determines from the date of his appointment and of every subsequent period of 6 months during which he acts as receiver and within one month after he ceases to act as receiver, lodge with the Registrar an account showing —

(a) his receipts and payments during each such period 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 requires, to the date of his so ceasing to act;

(b) in the case of the second account lodged under this subsection and all subsequent accounts - the aggregate amount of receipts and payments during all preceding periods since his appointment; and

(c) where he has been appointed pursuant to the powers contained in an instrument - the amount (if any)owing under that instrument —

(i) in the case of the first account - at the time of his appointment and at the expiration of the period to which the account relates; and

(ii) in the case of any other account - at the expiration of the period to which the account relates,

and his estimate of the total value, at the expiration of the period to which the account relates, of the property of the company that is subject to the instrument.

(2) The Registrar may, of his own motion or on the application of the company or of a creditor of the company, cause accounts lodged in accordance with subsection (1) to be audited by a registered company auditor appointed by the Registrar and, for the purpose of the audit, the receiver shall furnish the auditor with such books and information as the auditor requires.

(3) Where the Registrar causes the accounts to be audited upon the request of the company or of a creditor, the Registrar may require the company or creditor, as the case may be, to give security for the payment of the cost of the audit.

(4) The costs of an audit as mentioned in subsection (3) shall be fixed by the Registrar and the Registrar may, if he thinks fit, make an order declaring that, for the purposes of subsection 410(1), those costs shall be deemed to be a debt incurred by the receiver in the course of the receivership for services rendered and, where such an order is made, the receiver is liable for those costs in accordance with section 410 as if they were such a debt.

(5) A receiver who fails to comply with a requirement made under this section is guilty of an offence.

Payments of certain debts in priority to claims under a floating charge

426. (1) Where —

(a) a receiver is appointed on behalf of the holders of debentures of a company or registered foreign company that are secured by a floating charge or possession is taken or control is assumed, by or on behalf of the holders of debentures of a company or registered foreign company of property comprised in or subject to a floating charge; and

(b) at the date of the appointment or of the taking of possession or assumption of control (in this section referred to as "the relevant date") —

(i) the company has not commenced to be wound up voluntarily; and

(ii) the company has not been ordered to be wound up by the Court,

the following provisions of this section have effect.

(2) The receiver or other person taking possession or assuming control of property of the company shall pay out of the property of the company coming into his hands the following debts or amounts:

(a) first, an amount that in a winding up is payable in priority to unsecured debts pursuant to section 550;

(b) second, if an auditor of the company had applied to the Registrar under subsection 354(5) for consent to his resignation as auditor and the Registrar had refused that consent before the relevant date - the reasonable fees and expenses of the auditor incurred during the period commencing on the date of the refusal of consent by the Registrar and ending on the relevant date;

(c) third, a debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 545(1)(e) or (g) or section 548.

(3) The receiver or other person taking possession or assuming control of property of a registered foreign company shall pay, out of the property of the company coming into his hands, the following debts or amounts in priority to a claim for principal or interest in respect of the debentures:

(a) first, an amount that in a winding up is payable in priority to unsecured debts pursuant to section 550;

(b) second, a debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 545(1)(e) or (g) or section 548.

(4) The receiver or other person taking possession or assuming control of property shall pay debts and amounts payable pursuant to paragraph (2)(c) or (3)(b) in the same order of priority as is prescribed by Subdivision C of Division 4 of Part 22 in respect of those debts and amounts.

(5) If an auditor of a company had applied to the Registrar under subsection 354(5) for consent to his or its resignation as auditor and the Registrar had, before the relevant date, refused that consent, a receiver shall, when property comes to his hands, before paying a debt or amount referred to in paragraph (2)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes to the hands of the receiver, being fees and expenses in respect of which provision had not already been made pursuant to this subsection.

(6) If an auditor of a company applies to the Registrar under subsection 354(5) for consent to his or its resignation as auditor and, after the relevant date, the Registrar refuses that consent, the receiver shall, in relation to property that comes to his hands after the refusal of consent by the Registrar, before paying any debt or amount referred to in paragraph (2)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal of consent by the Registrar but before the date on which the property comes to the hands of the receiver, being fees and expenses in respect of which provision has not already been made pursuant to this subsection.

(7) A receiver shall make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subsection (5) or (6) whether or not the auditor has made a claim for fees and expenses for that period but, where the auditor has not made a claim, the receiver may estimate the reasonable fees an expenses of the auditor for that period and make provision in accordance with that estimate.

(8) For the purposes of this section the references in Subdivision C of Division 4 of Part 22 to the relevant date shall be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case requires.

Enforcement of duty of receiver to make returns

427. (1) If a receiver of the property of a company or registered foreign company who —

(a) has made default in making or lodging a return, account or other document or in giving a notice required by law fails to make good the default within 14 days after the service on him, by a member or creditor of the company or trustee for debenture holders, of a notice requiring him to do so; or

(b) has been appointed under the powers contained in an instrument has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of, and to vouch, his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purposes of this subsection, make an order directing the receiver to make good the default within a time specified in the order.

(2) An application for the purposes of subsection (1) may be made —

(a) in a case to which paragraph (a) of that subsection applies - by a member or creditor of the company or by a trustee for debenture holders; and

(b) in a case to which paragraph (b) of that subsection applies - by the liquidator of the company.

PART 21 — OFFICIAL MANAGEMENT

Interpretation

428. (1) In this Part, "special notice", in relation to a meeting of creditors of a company, means notice of the meeting sent by post to each of the creditors and posted not less than 14 days and not more than 21 days before the date of the meeting.

(2) For the purpose of this Part, a special resolution shall be deemed to have been passed at a meeting of creditors of a company if the resolution is agreed to by a majority in number of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to not less than 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, at the meeting.

(3) A creditor of a company, being a corporation that is related to the company, is not entitled to vote as a creditor on a special resolution moved at a meeting of creditors of the company convened under this Part.

(4) Subject to subsection (3), this Part does not affect the rights of a secured creditor of a company.

Power of company to call meeting of creditors to appoint official manager

429. (1) Where —

(a) the majority of the directors of a company present at a meeting of the directors specially convened for the purpose resolve that the company is unable to pay its debts as and when they become due and payable - the company may; or

(b) the company is requested in writing to do so by a creditor of the company who has a judgment against the company unsatisfied to the extent of not less than $1,000 - the company shall,

convene a meeting of its creditors in accordance with this section for the purpose of placing the company under official management and appointing an official manager.

(2) The meeting shall be convened by giving notice of the meeting in accordance with this section to the creditors of the company.

(3) The notice shall be given by the company within —

(a) 35 days after the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1); or

(b) such further period as the Registrar allows where the Registrar is satisfied that the company would not be able to give the notice within the time specified in paragraph (a).

(4) The company shall, not less than 7 days before the expiration of the period within which the notice is required to be given, prepare a report as to the affairs of the company made up to a date not earlier than the date of the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1).

(5) Each director of the company shall furnish to the company a certificate under his hand certifying whether the report does or does not, to the best of his knowledge, information and belief, show fairly the state of affairs of the company as at the date to which it is made up and, subject to subsection (8), a company shall be deemed to have failed to comply with subsection (4) unless each director has furnished to the company such a certificate.

(6) Where a director certifies that to the best of his knowledge, information and belief the report does not show fairly the state of affairs of the company, he shall also state in the certificate the grounds on which he formed that opinion.

(7) A director of a company shall not furnish a certificate under subsection (5) concerning a report prepared in accordance with subsection (4) unless he has made such enquiries as are reasonably necessary to determine whether the report does or does not show fairly the state of affairs of the company as at the date to which it is made up.

(8) Where the Registrar is satisfied that it is impracticable for a company to obtain the certificate referred to in subsection (5) from a director of the company, the Registrar may exempt the company from the obligation to obtain the certificate from that director.

Requirements as to meeting

430. (1) For the purposes of subsection 429(2), notice of a meeting of creditors of a company shall be given by —

(a) sending by post to each of the creditors a notice convening the meeting; and

(b) publishing a copy of that notice in Norfolk Island, and in each State or other Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding the passing of the resolution, or the receipt by the company of the request, referred to in subsection 429(1), in the Gazette or in a newspaper published in that State or other Territory, as the case may be,

not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting.

(2) Subject to subsection (3), the company shall attach to each notice posted in accordance with subsection (1) —

(a) a summary of the affairs of the company;

(b) a notice that the report that the company is required by subsection 429(4) to prepare is available for inspection at the registered office of the company and that a copy of the report will be sent by post to a creditor who makes a request in writing for a copy or will be delivered to a creditor who attends at the registered office of the company and requests a copy; and

(c) a copy of each certificate furnished by a director of the company in accordance with subsection 429(5).

(3) The company may attach to a notice posted in accordance with subsection (1) a copy of the report prepared in accordance with subsection 429(4) and, where it so attaches a copy of that report, the company is not required to attach the summary and notice referred to in paragraphs (2)(a) and (b).

(4) A meeting of creditors convened under this section shall be convened for a date, time and place convenient to the majority in value of the creditors.

(5) The creditors of the company present at the meeting who are entitled to vote on a special resolution moved at the meeting shall appoint a chairman of the meeting.

(6) The chairman so appointed shall at the meeting determine whether the date, time and place of the meeting are convenient to the majority in value of the creditors and his decision is final.

(7) Within 7 days after the first notice convening the meeting is posted to a creditor, the company shall lodge with the Registrar a copy of that notice and shall attach to the copy a certified copy of the report required to be prepared by the company under subsection 429(4) and a certified copy of each of the certificates furnished by the directors under subsection 429(5).

Offences

431. (1) If a company fails to comply with subsection 429(1) or (4) or 430(2) or (7), or a request referred to in paragraph 430(2)(b), the company is, notwithstanding section 660, not guilty of an offence against this Act but any officer of the company who is in default is guilty of an offence.

(2) A director of a company who fails to take all reasonable steps to secure compliance by the company with subsection 429(4) is guilty of an offence.

(3) A director who contravenes, or fails to comply with, subsection 429(5), (6) or (7) is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Statement of affairs to be submitted to meeting of creditors

432. (1) The directors of a company that has convened a meeting of creditors under section 429 shall appoint one of their number to attend the meeting.

(2) The director so appointed shall attend the meeting and shall —

(a) submit to the meeting the report prepared in accordance with subsection 429(4); and

(b) disclose to the meeting the company's affairs and the circumstances leading up to the convening of the meeting.

(3) If default is made in complying with this section, a director of the company who is in default is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Power to adjourn meeting

433. (1) A meeting convened under section 429 may, by resolution, be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than 21 days after the date for which the meeting was originally convened.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a date later than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the time, date and place of the resumption of the meeting to be published in the Gazette at least 7 days before the date of the resumption of the meeting.

Power of creditors to place company under official management

434. (1) At a meeting of creditors of a company convened under section 429, the creditors may, by special resolution —

(a) resolve that the company be placed under official management for a period, commencing on the date of the passing of the resolution and ending not more than 3 years from that date, specified in the resolution;

(b) appoint a person named in the resolution who —

(i) has consented in writing to act as official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a corporation that is a mortgagee of property of the company; and

(iv) has furnished to the company a certificate under his hand stating that he is not an insolvent under administration,

to be the official manager of the company during the period of the official management; and

(c) fix the amount of the salary or other remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) The company shall —

(a) within 7 days after the passing of the special resolution referred to in subsection (1) —

(i) cause a notice of the passing of the resolution to be lodged with the Registrar; and

(ii) send by post to each of the creditors and members of the company a notice of the passing of the special resolution and of the provisions of section 449; and

(b) within 21 days after the passing of the special resolution, cause notice that the company has been placed under official management and of the full name of the official manager to be published in the Gazette.

(3) If the company fails to comply with subsection (2), the company is, notwithstanding section 660, not guilty of an offence but an officer of the company who is in default is guilty of an offence.

(4) A creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, more than 5% of the total unsecured debts of the company may, within 14 days after the appointment of a person as official manager of the company under subsection (1) of this section or subsection 452(1), apply to the Court for an order terminating that appointment and, if the Court is satisfied that the person so appointed is not suitable to be the official manager of the company, the Court may make an order terminating his appointment and appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

(5) Where under subsection (4) the Court appoints a person to be the official manager of a company, the provisions of this Part apply to that person as if he had been appointed official manager of the company at a meeting of creditors under subsection (1) on the date of the order.

(6) The person obtaining the order shall —

(a) within 7 days after the making of the order, lodge with the Registrar notice of the making of the order and its date; and

(b) within 7 days after the passing and entering of the order, lodge with the Registrar an office copy of the order.

(7) A person who fails to comply with subsection (6) is guilty of an offence.

Appointment of committee of management

435. (1) At a meeting of the creditors of a company held under this Part, the creditors may resolve that a committee of management be appointed for the purposes of this Part.

(2) The committee shall consist of 5 natural persons, of whom 3 shall be appointed by the creditors of the company by special resolution and 2 shall be appointed by the members of the company at a general meeting of the company.

(3) A person is not eligible to be appointed a member of the committee unless he is —

(a) in the case of an appointment by the creditors of the company —

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a power of attorney given by the creditor; or

(iii) a person authorised in writing by a creditor of the company to be a member of the committee; or

(b) in the case of an appointment by the members of the company —

(i) a member of the company;

(ii) the attorney of a member of the company by virtue of a power of attorney given by the member; or

(iii) a person authorised in writing by a member of the company to be a member of the committee of management.

Notice of appointment and address of official manager

436. (1) A person who has been appointed official manager of a company shall —

(a) within 7 days after the date of his appointment lodge with the Registrar notice of his appointment and of the address of his office; and

(b) within 14 days after a change in the situation of his office, lodge with the Registrar notice of the change.

(2) A person shall —

(a) within 7 days after his resignation or removal from office as official manager of a company, lodge with the Registrar notice of his resignation or removal; and

(b) within 21 days after his resignation or removal from office as official manager of a company, cause notice of his resignation or removal to be published in the Gazette.

(3) A person who fails to comply with any of the provisions of this section is guilty of an offence.

Effect of resolution

437. (1) Subject to section 449, where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection 434(1) —

(a) the company is under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this Part;

(b) the directors of the company cease to hold office;

(c) the person appointed official manager of the company shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company; and

(d) the affairs of the company shall be conducted subject to the provisions of this Part.

(2) The official manager shall be chairman of a meeting of the company, of its creditors or of the members and creditors of the company that is held or resumed while he holds office as official manager.

Six-monthly meetings of creditors and members

438. (1) Subject to subsection (2), within 2 months after the expiration of the period of 6 months commencing on the date of his appointment as official manager and of each subsequent period of 6 months, or, if the Registrar, at any time before the expiration of such a period, requires or permits him to do so in respect of a shorter period specified by the Registrar, within 2 months after the expiration of the period so specified, the official manager of a company shall —

(a) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he thinks necessary to enable the creditors and members of the company to determine the financial position of the company as at the last day of the period;

(b) convene a meeting of the creditors and members of the company to consider the statement and report; and

(c) cause the statement and report to be laid before the creditors and members at that meeting.

(2) Where under subsection (1) the Registrar has required or permitted the preparation of a statement and report in respect of a period shorter less than 6 months, the next period of 6 months shall commence at the expiration of that lesser period.

(3) The official manager shall attach to each statement referred to in subsection (1) —

(a) a statement signed by him; and

(b) in the case of a company that is required by this Act to appoint a person to be its auditor - a statement signed by the auditor,

stating in each case whether or not, in the opinion of the person by whom the statement is signed, the statement referred to in subsection (1) is drawn up so as to show fairly the affairs of the company.

(4) The official manager shall cause copies of the statement and report referred to in this section to be kept and to be available for inspection by a creditor or member of the company at the registered office of the company.

(5) The official manager shall —

(a) give written notice to each creditor and member of the company that the statement referred to in subsection (1) has been made up when next sending to the creditors or members a report, notice of meeting, notice of call or dividend relating to the company; and

(b) in the notice state at what address, and between what hours, the statement may be inspected.

(6) Within 7 days after the meeting is held, the official manager shall lodge with the Registrar a notice of the holding of the meeting and of the date on which it was held, together with a copy of each statement and report laid before the creditors and members at that meeting.

(7) Where a quorum is not present at the meeting, the official manager shall, within 7 days after the day for which the meeting was convened or, if the meeting was adjourned and no quorum is present at the adjourned meeting, within 7 days after the day to which the meeting was adjourned, lodge with the Registrar —

(a) a notice stating —

(i) that the meeting was duly convened and that no quorum was present; or

(ii) that the meeting was duly convened and adjourned and that no quorum was present at the adjourned meeting,

as the case requires; and

(b) a copy of the statement and a copy of the report prepared in accordance with paragraph (1)(a).

(8) Where the statement referred to in subsection (1) is not accompanied by a statement signed by a registered company auditor, the Registrar may cause the first-mentioned statement to be audited by a registered company auditor appointed by the Registrar, and, for the purposes of the audit, the official manager shall furnish to the auditor such books and information as the auditor requires.

(9) The costs of an audit under subsection (8) shall be fixed by the Registrar and are part of the costs of the official management.

(10) An official manager who fails to comply with a provision of this section is guilty of an offence.

(11) An auditor of a company who fails to supply to the official manager at his request a statement required by the official manager for the purposes of compliance with subsection (3) is guilty of an offence.

Stay of proceedings

439. (1) Where a company is under official management, an action or other civil proceeding against the company shall not be commenced or proceeded with in a court of Norfolk Island until the company ceases to be under official management, except with the leave of the Court and in accordance with such terms and conditions (if any) as the Court imposes.

(2) At any time after a company has convened a meeting of its creditors for the purpose of placing the company under official management and before the passing of a special resolution by the creditors under subsection 434(1) resolving that the company be placed under official management, the company or a creditor of the company may, if an action or other civil proceeding against the company is pending in a court of Norfolk Island, apply to the Court to stay or restrain further proceedings in the action or proceeding and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

Power to extend period of official management

440. (1) The official manager of a company shall convene a meeting of creditors of the company for a day not earlier than 7 months, and not later than one month, before the day on which the period of official management is due to expire for the purpose of considering whether the period of official management should be extended and, if the creditors think fit, passing a special resolution extending the period of official management for a further period not exceeding 12 months.

(2) If, at a meeting held under section 438 not earlier than 7 months and not later than one month before the day on which the period of official management is due to expire, the creditors of the company consider whether the period of official management should be extended, the official manager shall be taken to have complied with subsection (1).

(3) The meeting referred to in subsection (1) shall be convened by the official manager by sending by post to each of the creditors, not less than 7 days nor more than 14 days, before the day fixed for the holding of the meeting, a notice specifying the date, time, place and purpose of the meeting.

(4) The official manager shall, within 7 days after the passing of a special resolution under subsection (1), lodge with the Registrar a copy of the resolution.

Extension of period of official management

441. Where a special resolution extending the period of official management of a company is passed at a meeting convened in accordance with section 440, the company continues under official management during the period specified in the resolution unless the official management is further extended or is earlier terminated under this Part.

Appointment of official manager not to affect appointment and duties of auditor

442. Notwithstanding the appointment of an official manager of a company and while the company is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors continue to apply to and in relation to the company and, in the application of those provisions to and in relation to the company, a reference to the directors of a company shall be read as reference to the official manager of the company.

Duties of the official manager

443. (1) Subject to this Act, the official manager of a company shall —

(a) as soon after his appointment as is reasonably practicable, take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) subject to a direction given pursuant to paragraph (c), conduct the business and management of the company in such manner as he thinks most economical and most beneficial to the interests of the members and creditors of the company;

(c) comply with any directions of the creditors of the company that are agreed to by special resolution at a meeting of creditors of which special notice has been given;

(d) comply with all requirements of this Act applicable to the company or to the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on the company or on the directors of the company by or under this Act;

(e) if so directed by the committee of management of the company acting under subsection 461(6) or by a creditor or creditors of the company to whom the company owes not less than 10% in value of the total unsecured debts of the company - by notice sent by post to each of the creditors, convene a meeting of creditors of the company; and

(f) if a meeting of creditors held under subsection 440(1) does not resolve to extend the period of the official management - within 7 days after the conclusion of the meeting, by notice sent by post to each of the members of the company, convene a meeting of the members to be held on a date not later than 21 days after the conclusion of the meeting of creditors under subsection 440(1) for the purpose of —

(i) reporting to the members accordingly; and

(ii) enabling the members, if they think fit, to elect directors of the company to take office upon the termination of the period of official management.

(2) A meeting convened under paragraph (1)(f) shall be deemed to have been properly convened and to be empowered under the memorandum and articles of the company to appoint or elect directors and directors so appointed or elected take office on the termination of the period of official management.

(3) If at any time the official manager is of opinion that the continuance of the official management of the company will not enable the company to pay its debts, he shall convene a meeting of the members of the company for the purpose of considering and, if the members think fit, passing a special resolution that the company be wound up voluntarily.

(4) Where the official manager convenes a meeting under subsection (3), the official manager shall —

(a) convene a meeting of the creditors of the company for the day, or the day next following the day, on which the meeting of members is proposed to be held and for a time and place convenient to the majority in value of the members; and

(b) cause a notice of the meeting to be sent by post to each creditor on the same day as the sending of the notices of the meeting of the members.

(5) The official manager shall lay before the meeting of creditors a report as to the affairs of the company made up to a date that is not more than 30 days before the day for which the meeting is convened.

(6) Where, at a meeting of members of a company convened under subsection (3), the members pass a special resolution to the effect that the company be wound up voluntarily —

(a) the members shall, at that meeting, nominate a person to be liquidator for the purpose of the winding up; and

(b) the creditors may, at the meeting of creditors of the company convened under subsection (4), nominate a person to be liquidator for that purpose.

(7) A person nominated by the members of a company pursuant to subsection (6) shall, subject to subsection (8) and (9), be the liquidator of the company.

(8) Where the members and creditors of a company nominate different persons to be the liquidators of the company, the person nominated by the creditors shall, subject to subsection (9), be the liquidator of the company.

(9) Where the members and creditors of a company nominate different persons to be the liquidator of the company, the Court may, on the application of a member or creditor of the company made within 7 days after the date on which the nomination was made by the creditors, by order, direct that the person nominated by the members be the liquidator of the company or that the persons nominated by the members and creditors, respectively, be jointly the liquidators of the company.

(10) On the appointment of a liquidator the company ceases to be under official management.

(11) The person who, immediately before the appointment of the liquidator, was the official manager of the company shall, within 7 days after the holding of the later of the meetings referred to in subsections (3) and (4), lodge with the Registrar a notice of the holding of the meetings and of the dates of the meetings and shall attach to the notice a copy of the report referred to in subsection (5).

(12) A person who fails to comply with subsection (1), (3), (4), (5) or (11) is guilty of an offence.

Undue preferences in the case of official management

444. (1) A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a company which, if it had been made or incurred by a natural person, would, in the event of his becoming a bankrupt under the Bankruptcy Act, be void as against the trustee in the bankruptcy, is in the event of the company being placed under official management void as against the official manager.

(2) Where —

(a) a creditor of a company has issued execution against the property of the company or has instituted proceedings to attach a debt due to the company or to enforce a charge, or a charging order, against property of the company; and

(b) the creditor would, if the execution or proceedings had been issued or instituted in relation to a debt due by a natural person who subsequently became bankrupt under the Bankruptcy Act, be required to pay the any amount received by the creditor as a result of the execution or proceedings to the trustee in the bankruptcy,

the creditor shall, in the event of the company being placed under official management, pay any amount received as a result of the execution or proceedings, less the taxed costs of the execution or proceedings, to the official manager.

(3) Where a creditor has paid to the official manager of a company an amount in accordance with subsection (2), that creditor shall be taken to be an unsecured creditor of the company for the amount owed to him by the company as if the execution or proceedings had not been issued or instituted.

(4) For the purposes of this section —

(a) "the Bankruptcy Act" means the *Bankruptcy Act 1966* of the Commonwealth; and

(b) the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person and the date on which a person becomes a bankrupt is the date on which the company commences to be under official management.

Application and disposal of property during official management

445. (1) The official manager of a company may sell or otherwise dispose of property of the company in the ordinary course of the business of the company.

(2) The official manager of a company may sell or otherwise dispose of property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price, or the aggregate of the prices received for other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed $5,000.

(3) The official manager of a company may, with the consent of the committee of management, sell or otherwise dispose of property of the company otherwise than in the ordinary course of the business of the company if the aggregate value of that property and the price, or the aggregate of the prices, received for other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed $20,000.

(4) The official manager of a company may —

(a) with the leave of the Court; or

(b) with the consent of the creditors given by a special resolution passed at a meeting of the creditors of which special notice has been given, being a notice that set out the intention to propose, as a special resolution, a resolution for the sale or disposal, or for the mortgage or charge, of specified property of the company,

sell or otherwise dispose of, or mortgage or charge, property of the company in respect of which consent is so given.

(5) The moneys of the company that become available to the official manager of the company during the period of the official management shall be applied by him in the following order:

(a) first, in the payment of the costs of the official management, including the remuneration of the official manger, the deputy official manager (if any) and the auditor of the company (if any);

(b) second, in discharge of the liabilities of the company incurred in the course of the official management; and

(c) third, in discharge of any other liabilities of the company.

(6) Subject to subsection (5), the liabilities of the company referred to in paragraph (5)(c) shall be discharged as if those liabilities were liabilities of a company being wound up, and the provisions of Part 22 apply, as far as possible, to, and in relation to, the discharge of those liabilities.

Official manager may apply to Court for direction

446. (1) An official manager may apply to the Court for directions in relation to a matter arising out of the exercise of his powers or functions as official manager.

(2) An act done in accordance with a direction given by the Court on the application shall be deemed to have been properly done for the purposes of this Act.

Certain provisions applicable to official management

447. (1) Where a company is under official management, the following provisions of this section have effect.

(2) A sum due to a member in his capacity as a member by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in the case of competition between himself and some other creditor who is not a member but the a sum may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

(3) The Court may make such order for inspection of the books of the company by creditors and members as the Court thinks just and any books in the possession, or in the custody or under the control, of the company may be inspected by creditors or members accordingly but not further or otherwise.

(4) The provisions of sections 521, 522, 523 and 559 apply to and in relation to the company as if —

(a) the company were being wound up;

(b) a reference in any of those provisions to the liquidator of the company were a reference to the official manager of the company;

(c) a reference in any of those provisions to contributories were a reference to members of the company; and

(d) the reference in subsection 559(1) to a report made under section 521 were a reference to a report made under that section as applied by virtue of this subsection.

Power of Court to terminate official management and give directions

448. (1) If at any time, on the application of the official manager, of a creditor or member of a company or of the Registrar, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled or that, for some other reason, it is undesirable that the company should continue to be under official management, the Court may, by order, terminate the official management on a date specified in the order and, upon that date, the official manager ceases to be the official manager of the company.

(2) The Court shall not make an order under subsection (1) on an application by a person other than the Registrar unless at least 7 days' notice in writing of the application has been given to the Registrar.

(3) The Court may, on an application under subsection (1), if the applicant or, where the Registrar is not the applicant, the Registrar so requests, grant leave to the person making the request to file an application for the winding up of the company.

(4) On making an order under subsection (1), the Court may also give such directions as are just for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors to take office upon the termination of the official management.

(5) The costs and expenses of a proceeding before the Court under this section and the costs and expenses incurred in convening a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, form part of the costs of the official management of the company.

Resolution to place company under official management effective, subject to appeal

449. (1) Where a resolution has been passed under subsection 434(1) determining that a company be placed under official management —

(a) a creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, an amount that exceeds 5% of the total unsecured debts of the company;

(b) a member holding, or a representative of a group of members holding in the aggregate, not less than 10% of the paid-up capital of the company; or

(c) in the case of a company not having a share capital, a member holding, or a representative of a group of members holding in the aggregate, not less than 10% of the total voting rights of members having a right to vote at all general meetings,

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution and the Court may, if it is of the opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

(2) Where the Court makes an order cancelling a resolution, the Court may give directions for the resumption of the management and control of the company by the persons who were officers of the company immediately before it was placed under official management.

(3) Upon the cancellation of a resolution by the Court under this section, the company ceases to be under official management and the person appointed official manager of the company ceases to hold office.

(4) Where the Court makes an order under this section varying a resolution, the resolution has effect, from and including the date of the order, as varied by the order.

(5) Where an order is made under this section, the acts of the official manager before the making of the order are as valid and binding on the company, and on the members and creditors of the company, as they would have been if the order had not been made.

Lodgment of office copy of Court order

450. (1) Where the Court makes an order under section 448 (otherwise than on the application of the Registrar) or an order under section 449, the person on whose application the order is made shall lodge with the Registrar —

(a) within 7 days after the order is made - notice of the making of the order and of the date of the order; and

(b) within 7 days after the passing and entering of the order - an office copy of the order.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

(3) Where the Registrar is an applicant for an order under section 448, the Registrar shall enter in his records particulars of the application and, after the passing and entering of the order, an office copy of the order, and section 60 applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the Registrar.

Termination of appointment and release of official manager

451. (1) The appointment of a person as official manager of a company terminates where —

(a) that person tenders his resignation in writing to —

(i) the committee of management appointed pursuant to this Part; or

(ii) a meeting of creditors of the company;

(b) a special resolution that the appointment of the person be terminated is passed at a meeting of creditors of the company of which special notice stating that the meeting is convened for the purpose of considering such a resolution has been given; or

(c) the Court makes an order that the appointment of the person be terminated.

(2) The appointment of a person as official manager of a company shall be terminated by the committee of management or, if there is no committee of management, by the Court on the application of a creditor or member of the company if —

(a) the official manager becomes an insolvent under administration;

(b) the official manager becomes incapable, by reason of mental infirmity, of managing his affairs;

(c) having been appointed by an order of the Court, the official manager ceases to be a registered company auditor; or

(d) the official manager becomes the auditor of the company.

Vacancy in office of official manager

452. (1) Where a vacancy occurs in the office of official manager of a company, the committee of management may appoint or if there is no committee of management, a meeting of creditors of the company convened for that purpose by any 2 of their number may by special resolution appoint, as official manager, a person who is qualified for appointment.

(2) A person is qualified for appointment under subsection (1) if —

(a) he has consented in writing to act as official manager of the company;

(b) he is not the auditor of the company;

(c) he is not an officer of a corporation that is a mortgagee of property of the company; and

(d) he has furnished to the committee of management or to the chairman of the meeting of creditors, as the case may be, a certificate under his hand stating that he is not an insolvent under administration.

(3) A person appointed official manager under subsection (1) shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company.

Transitional period

453. Where the appointment of an official manager terminates or is terminated, until a person is appointed official manger under subsection 452(1), the powers and functions of the official manager vest in, and the duties of the official manager shall be performed by —

(a) the deputy official manager;

(b) if there is no deputy official manager - the committee of management; or

(c) if there is neither a deputy official manager nor a committee of management - a person appointed by the Court, on the application of a creditor of the company, to act as official manager until a person is appointed official manager under subsection 452(1).

Meeting to determine appointment of official manager

454. (1) A person who convenes a meeting of creditors of a company for the purpose of considering a resolution that the appointment of the official manager of the company be terminated shall give to the official manager not less than 14 days' written notice of the meeting and of the purpose for which it is being convened.

(2) Where the official manager of a company receives a notice given under subsection (1), he shall —

(a) before the date on which the meeting is to be held, prepare a report showing how the official management of the company has been conducted by him;

(b) present the report to the meeting and give such explanations of that report as are reasonably requested by a creditor; and

(c) within 7 days after the holding of the meeting, lodge with the Registrar a notice of the holding of the meeting —

(i) setting out the date on which the meeting was held; and

(ii) stating whether the resolution for the termination of his appointment as official manager was passed,

together with a copy of the report prepared in accordance with paragraph (a).

Residual duties of official manager

455. (1) Where a person (other than a person who has been given notice of a meeting under subsection 454(1)) ceases to be the official manager of a company (including a person who ceases to be the official manager by reason that his appointment is terminated by the Court under subsection 434(4)) —

(a) he shall, notwithstanding that he has ceased to be the official manager, within 14 days after the day on which he ceased to be the official manager, prepare a report showing how the official management was conducted by him and, for this purpose, he has a right of access to the books of the company; and

(b) he shall, within 28 days after the day on which he ceased to be the official manager, convene a meeting of all persons who were creditors of the company at the commencement of the official management and all persons who, on the day on which the person ceased to be the official manager, were creditors of the company.

(2) Notice of the meeting referred to in paragraph (1)(b) shall be given to the creditors of the company by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the date fixed for the holding of the meeting, a notice specifying the date, time, place and purpose of the meeting and a copy of the report prepared in accordance with paragraph (1)(a).

(3) At the meeting of creditors convened under paragraph (1)(b), the person who was the official manager of the company shall present his report to the meeting and shall give such explanations of that report as are reasonably requested by a creditor.

(4) Within 7 days after the holding of the meeting referred to in paragraph (1)(b), the person who was the official manager shall lodge with the Registrar notice of the holding of the meeting and of the date on which it was held, together with a copy of the report prepared in accordance with paragraph (1)(a).

(5) At a meeting of creditors convened under paragraph (1)(b), 2 creditors constitute a quorum, and if a quorum is not present at the meeting, the person who was the official manager shall, within 7 days after the day for which the meeting was convened, lodge with the Registrar —

(a) a notice stating that the meeting was duly convened and that no quorum was present; and

(b) a copy of the report prepared in accordance with paragraph (1)(a).

(6) If the meeting is not held on the day for which it is convened under paragraph (1)(b), the person who was official manager shall, within 7 days after that day, lodge with the Registrar —

(a) a notice stating that the meeting was not held on that day; and

(b) a copy of the report prepared in accordance with paragraph (1)(a).

Expenses of official manager

456. (1) The expenses incurred by a person who was the official manager of a company in connection with the preparation of a report in accordance with paragraph 454(2)(a) form part of the costs of the official management.

(2) The expenses incurred by a person who was the official manager of a company in connection with the preparation of a report in accordance with paragraph 455(1)(a) and in relation to the convening and holding of the meeting in accordance with paragraph 455(1)(b) form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

Discharge from liability

457. (1) Subject to subsection (2), where a person ceases to be the official manager of a company (including a person who so ceases by reason that his appointment has been terminated by the Court under subsection 434(4)), the adoption by a meeting of creditors of the company of the report prepared by him under paragraph 454(2)(a) or paragraph 455(1)(a), as the case requires, and of his explanations, discharges him from all liability in respect of an act or omission by him in the management of the company or otherwise in relation to his conduct as official manager.

(2) The adoption by a meeting of creditors of a company of a report prepared in accordance with paragraph 454(2)(a) or 455(1)(a) by a person who has ceased to be the official manager of the company and of any explanations of the person in relation to the report does not —

(a) discharge the person from the liabilities referred to in subsection (1) if the adoption was obtained by fraud or by suppression or concealment of a material fact; or

(b) discharge the person from a liability to which, by virtue of a law in force in Norfolk Island other than this Act, he would be subject in respect of any negligence, default, breach of trust or breach of duty committed by him in relation to the company.

(3) If the report prepared by a person in accordance with paragraph 454(2)(a) or 455(1)(a) and the explanations of the report are not adopted by a meeting of creditors within 2 months after —

(a) in the case of a report prepared in accordance with paragraph 454(2)(a) - the date of the meeting to which the report was presented; or

(b) in the case of a report prepared in accordance with paragraph 455(1)(a) - the date on which notice of the meeting convened in accordance with paragraph 455(1)(b) was given to the creditors of the company,

the person may apply to the Court for an order of release.

Order of release

458. If a person who was official manager of the company complies with subsection 455(5), he may apply to the Court for an order of release.

Powers of Court

459. (1) On an application under subsection 457(3) or section 458, the Court may make an order releasing the applicant from liability for acts or omissions by him in the management of the company and such an order has the same effect as the adoption of a report and explanations has under subsection 457(1).

(2) Where the Court makes an order under subsection (1), it may by order direct that the costs or expenses incurred by the applicant in connection with the application shall form part of the costs of the official management and shall be deemed to have been incurred during the period of official management.

(3) Where the Court makes an order under subsection (1), the person who was the official manager shall lodge with the Registrar an office copy of the order within 7 days after the passing and entering of the order.

Notification that corporation is under official management

460. (1) Where a company is under official management or a corporation is under official management under the law of a State or of a Territory other than Norfolk Island, in each business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the company or corporation, there shall be set out after the name of the company or corporation where it first appears the words "Under official management".

(2) If default is made in complying with subsection (1), the company or corporation and any officer of the company or corporation who is in default are each guilty of an offence.

Penalty: 10 penalty units.

Functions of committee of management and appointment of deputy official manager

461. (1) The functions of the committee of management of a company appointed pursuant to this Part are to assist and advise the official manager of the company in relation to matters concerning the management of the company on which he requests the advice and assistance of the committee.

(2) The committee of management of a company or a meeting of creditors of a company convened by the official manager —

(a) may appoint a person who —

(i) has consented in writing to act as deputy official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a corporation that is a mortgagee of property of the company; and

(iv) has furnished to the official manager a certificate under his hand stating that he is not an insolvent under administration,

to be a deputy official manager of the company;

(b) may remove the deputy official manager from office and may, if the committee of management or the meeting of creditors, as the case may be, considers it is necessary, appoint another person to be deputy official manager in his place; and

(c) may determine the amount of the salary or other remuneration of the deputy official manager.

(3) If the official manager of a company is unable to act by reason of illness or absence, or if there is a vacancy in the office of official manager of a company, a deputy official manager shall, subject to any written directions given to him by the official manager, act as the official manager and, while so acting, has the powers, duties and functions of the official manager.

(4) A person who is appointed deputy official manager of a company shall, within 14 days after his appointment, lodge with the Registrar a notice of his appointment and of the address of his office and, in the event of a change in the situation of his office, he shall, within 14 days after the change lodge with the Registrar notice of the change.

(5) A person who ceases to be deputy official manager shall, within 14 days after ceasing to be deputy official manager, lodge with the Registrar notice accordingly.

(6) The committee of management of a company may, from time to time, direct the official manager of the company to convene a meeting of the creditors of the company or a meeting of the members of the company or a meeting of both creditors and members of the company and the official manager shall give effect to the direction.

(7) Subject to this section and to the regulations, the provisions of sections 536 and 537 apply to and with respect to a committee of management of a company, the proceedings of and vacancies in a committee of management of a company, and the removal of members of the committee of management of a company, and so apply as if —

(a) a reference in any of those provisions to the committee of inspection or to the committee were a reference to the committee of management;

(b) a reference in any of those provisions to a member of the committee were a reference to a member of the committee of management;

(c) a reference in any of those provisions to the liquidator were a reference to the official manager of the company; and

(d) a reference in any of those provisions to a contributory were a reference to a member of the company.

PART 22 - WINDING UP

Division 1 — Preliminary

Powers of Court cumulative

462. The powers of the Court under this Part are in addition to, and do not affect, any powers of instituting proceedings against a contributory or debtor of a company or the property of a contributory or debtor for the recovery of a call or other sum.

Modes of winding up

463. **(1)** The winding up of a company may be either —

(a) by the Court; or

(b) voluntary.

(2) Unless the contrary intention appears, the provisions of this Act with respect to winding up apply to the winding up of a company in either of those modes.

Liability as contributories of present and past members

464. **(1)** On a company being wound up, each present and past member is liable to contribute to the property 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 succeeding provisions of this section.

(2) Subject to subsection (3), a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up.

(3) Where the company is a limited company and became a limited company within the period of 3 years immediately preceding the commencement of the winding up by virtue of a change of status pursuant to paragraph 97(1)(a) or the corresponding provision of the repealed laws, a past member of the company who was a member of the company at the time of the change of status —

(a) is liable to contribute in respect of debts and liabilities incurred before the change of status; and

(b) if no person who was a member of the company at the time of the change of status is a member at the commencement of the winding up, is so liable to contribute notwithstanding subsection (5) and whether or not the existing members have satisfied the contributions required to be made by them.

(4) A past member is not liable to contribute in respect of a debt or liability of the company incurred after he ceased to be a member.

(5) A past member is not liable to contribute unless it the Court is satisfied that the existing members are unable to satisfy the contributions required to be made by them.

(6) In the case of a company limited by shares, a contribution is not required from a member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member.

(7) In the case of a company limited by guarantee, a contribution is not, subject to subsection (11), required from a member exceeding the amount undertaken to be contributed by him to the property of the company in the event of its being wound up.

(8) Notwithstanding subsections (6) and (7), where the company is a limited company and became a limited company by virtue of a change of status pursuant to paragraph 97(1)(a) or the corresponding provision of the repealed laws, the amount that a member of the company at the time of the change of status, or a person who at that time was a past member of the company, is liable to contribute in respect of the debts and liabilities of the company incurred before that time is unlimited.

(9) Where the company has changed its status pursuant to paragraph 97(1)(d) or the corresponding provision of the repealed laws, a person who, at the time the company applied for the change of status, was a past member of the company and did not after that time become a member of the company is not, if the company is wound up, liable to contribute to the property of the company more than he would have been liable to contribute if the company had not changed its status.

(10) A sum due to a member in his capacity as a member by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in a case of competition between himself and some other creditor who is not a member but such a sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(11) If the company is a company limited both by shares and by guarantee, each member is liable to contribute to the extent of any sums unpaid on shares held by him in addition to the amount undertaken to be contributed by him to the property of the company in the event of its being wound up.

Nature of liability of contributory

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

Contributories in case of death or insolvency

466. (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representative is liable in due course of administration to contribute to the property of the company in discharge of his liability and is a contributory accordingly.

(2) If he makes default in paying any money ordered to be paid by him, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment, out of the estate, of the money due.

(3) If a contributory becomes an insolvent under administration or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories —

(a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and

(b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

Division 2 — Winding Up by the Court

Subdivision A — General

Application for winding up

467. (1) A company (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the application of any one or more of the following:

(a) the company;

(b) a creditor of the company, including a contingent or prospective creditor;

(c) a contributory;

(d) the liquidator;

(e) the Minister;

(f) the official manager of the company;

(g) a person who has been granted leave under section 448.

(2) The Court shall not hear an application made by a contingent or prospective creditor until such security for costs has been given as the Court orders and the Court is satisfied that a *prima facie* case for winding up has been established.

Circumstances in which company may be wound up by Court

468. (1) The Court may order the winding up of a company if —

(a) the company has by special resolution resolved that it be wound up by the Court;

(b) default is made by the company in lodging the statutory report or in holding the statutory meeting;

(c) the company does not commence business within 12 months after its incorporation or suspends its business for 12 consecutive months;

(d) except in the case of a company that is the wholly-owned subsidiary of some other company, the number of members is reduced, in the case of a proprietary company, to less than 2 or, in any other case, to less than 5;

(e) the company is unable to pay its debts;

(f) directors have acted in affairs of the company in their own interests rather than in the interests of the members as a whole or in some other manner that appears to be unfair or unjust to some or all of the members;

(g) affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole;

(h) an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members of the company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole;

(i) an inspector appointed under Part 17 has reported that he is of the opinion —

(i)that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public, of the shareholders or of the creditors that the company should be wound up; or

(j) the Court is of opinion that it is just that the company be wound up.

(2) For the purposes of subsection (1), if —

(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $1,000 then due has served on the company a demand, signed by or on behalf of the creditor, requiring the company to pay the sum so due and the company has, for 21 days after the service of the demand, failed to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the company has been returned unsatisfied in whole or in part; or

(c) the Court, after taking into account any contingent and prospective liabilities of the company, is satisfied that the company is unable to pay its debts,

the company shall be deemed to be unable to pay its debts.

Commencement of winding up by the Court

469. (1) Where, before the filing of the application, a resolution has been passed by the company for voluntary winding up, the winding up shall be deemed to have commenced at the time of the passing of the resolution and unless the Court, on proof of fraud or mistake otherwise orders, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up shall be deemed to have commenced at the time of the filing of the application for the winding up.

Payment of preliminary costs, etc

470. (1) The persons, other than the company itself or the liquidator of the company, on whose application a winding up order is made shall, at their own cost, prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the property of the company the taxed costs incurred by the applicant in the proceedings.

(3) Where the company has no property or does not have sufficient property and the Registrar believes on reasonable ground that a fraud has been committed by a person in the promotion or formation of the company or by an officer of the company in relation to the company since its formation, the taxed costs, or so much of them as is not reimbursed under subsection (2), may be reimbursed by the Administration to an amount not exceeding $1,000.

(4) Where the winding up order was made on the application of the company or of a liquidator of the company, the costs incurred shall, subject to any order of the Court, be paid out of the property of the company as if they were the costs of some other applicant.

Powers of Court on hearing of application

471. (1) On hearing a winding up application the Court may —

(a) dismiss the application with or without costs; or

(b) adjourn the hearing conditionally or unconditionally or make an interim or other order.

(2) The Court shall not refuse to make a winding up order on the ground only that the property of the company has been mortgaged to an amount equal to or in excess of the value or amount of that property or that the company has no property.

(3) The Court may, on the application coming on for hearing or at any time at the request of the applicant, of the company or of a person who has given notice that he intends to appear on the hearing of the application —

(a) direct that notices be given or steps be taken before or after the hearing of the application;

(b) dispense with notices being given or steps being taken that are required by this Act, by the rules or by an earlier order of the Court;

(c) direct that oral evidence be taken on the application or on a matter relating to the application;

(d) direct a speedy hearing or trial of the application or of an issue or matter;

(e) allow the application to be amended or withdrawn; and

(f) give such directions as to the proceedings as the Court thinks fit.

(4) Where the application is made by members as contributories on the ground that it is just that the company should be wound up or that the directors have acted in a manner that appears to be unfair or unjust to other members, the Court shall, if it is of opinion that —

(a) the applicants are entitled to relief either by winding up the company or by some other means; and

(b) in the absence of any other remedy, it would be just that the company should be wound up,

make a winding up order unless it is also of the opinion that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(5) The Court shall not refuse to make an order for winding up on the application of a person referred to in paragraph 467(1)(c) on the ground that, if the order were made, no property of the company would be available for distribution among the contributories.

(6) Where the application is made on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report be lodged or that a meeting be called and may order the costs to be paid by a person who, in the opinion of the Court, is responsible for the default.

(7) At any time after the filing of an application for winding up and before a winding up order has been made, the company, a creditor or a contributory may, where an action or other civil proceeding against the company is pending in a court of Norfolk Island, apply to the Court to stay or restrain further proceedings in the action or proceeding and the Court may stay or restrain the proceedings accordingly on such terms as are just.

Avoidance of dispositions of property, attachments, etc

472. (1) A disposition of property of the company (other than an exempt disposition or a transfer of shares) or an alteration in the status of the members of the company made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.

(2) In subsection (1), "exempt disposition", in relation to a company, means —

(a) a disposition made by the liquidator of the company pursuant to a power conferred on him by this Act or by an order of the Court; or

(b) a payment of money by a banking corporation out of an account maintained by the company with the banking corporation, being a payment made by the banking corporation in good faith and in the ordinary course of its banking business.

(3) Notwithstanding subsection (1), the Court may, on such terms as it thinks fit, where an application for winding up has been filed but a winding up order has not been made, by order —

(a) validate the making, after the filing of the application, of a disposition of property of the company; or

(b) permit the business of the company or some part of the business of the company to be carried on, and such acts as are incidental to the carrying on of the business or part of the business to be done, during the period before a winding up order is made.

(4) An attachment, sequestration, distress or execution put in force against the property of the company after the commencement of the winding up by the Court is void.

Application to be *lis pendens*

473. An application for winding up a company constitutes a *lis pendens* for the purposes of any law relating to the effect of a *lis pendens*.

Certain notices to be lodged

474. (1) An applicant for the winding up of a company shall —

(a) lodge with the Registrar, not later than noon on the next business day after the filing of the application, notice of the filing of the application and of the date on which the application was filed;

(b) after an order for winding up is made - lodge with the Registrar, within 2 business days after the making of the order, notice of the making of order, of the date on which the order was made and of the name and address of the liquidator; and

(c) if the application is withdrawn or dismissed - lodge with the Registrar, within 2 business days after the withdrawal or dismissal of the application, notice of the withdrawal or dismissal and of the date on which the application was withdrawn or dismissed.

(2) The applicant shall, within 7 days after the passing and entering of a winding up order —

(a) lodge an office copy of the order with the Registrar;

(b) serve an office copy of the order on the company and on such other person (if any) as the Court directs; and

(c) deliver to the liquidator an office copy of the order together with a statement that the order has been served as mentioned in paragraph (b).

(3) An applicant (other than the Minister) who fails to comply with subsection (1) or (2) is guilty of an offence.

Effect of winding up order

475. (1) An order for winding up a company operates in favour of all the creditors and contributories of the company as if it had been made on the application of all of them.

(2) Where an order has been made for the winding up of a company, or a provisional liquidator has been appointed in respect of a company, an action or other civil proceeding may not be commenced or proceeded with against the company in a court of Norfolk Island except —

(a) by leave of the Court; and

(b) in accordance with such terms as the Court imposes.

Subdivision B — Liquidators

Power of Court to appoint official liquidator

476. (1) On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.

(2) The Court may appoint a provisional liquidator at any time after the filing of a winding up application and before the making of a winding up order or, where there is an appeal against a winding up order, before a decision in the appeal is made, and that liquidator has and may exercise such functions, powers and duties as are conferred on him by this Act or prescribed by the rules or as the Court specifies in the order appointing him.

General provisions as to liquidators

477. (1) A liquidator appointed by the Court may resign or, on cause shown, may be removed by the Court.

(2) A provisional liquidator is entitled to receive such remuneration by way of a percentage or otherwise as the Court orders.

(3) A liquidator is entitled to receive such remuneration by way of a percentage or otherwise as is determined —

(a) if there is a committee of inspection - by agreement between the liquidator and the committee of inspection; or

(b) if there is no committee of inspection or the liquidator and the committee of inspection fail to agree —

(i) by a resolution passed at a meeting of creditors by a majority of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company that have been admitted to proof amount in the aggregate to not less than 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, that have been admitted to proof; or

(ii) if no such resolution is passed - by the Court.

(4) A meeting of creditors for the purposes of subsection (3) shall be convened by the liquidator by sending to each creditor a notice to which is attached a statement of all receipts and expenditure by the liquidator and of the remuneration sought by him.

(5) Where the remuneration of a liquidator is determined in the manner specified in paragraph (3)(a), the Court may, on the application of —

(a) a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company;

(b) a creditor or creditors whose debts against the company that have been admitted to proof amount in the aggregate to not less than 10% of the total amount of the debts of the creditors of the company that have been admitted to proof; or

(c) the Registrar,

review the liquidator's remuneration and may confirm, increase or reduce it.

(6) Where the remuneration of a liquidator is determined as mentioned in subparagraph (3)(b)(i), the Court may, on the application of the liquidator or of a member or members referred to in subsection (5), review the liquidator's remuneration and may confirm, increase or reduce it.

(7) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(8) If more than one liquidator is appointed by the Court, the Court shall declare whether anything that is required or authorised by this Act to be done by the liquidator is to be done by all or by some one or more of the persons appointed.

(9) Subject to this Act, the acts of a liquidator are valid notwithstanding a defect that may afterwards be discovered in his appointment or qualification.

Custody and vesting of property

478. (1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) If there is no liquidator, all the property of the company shall be in the custody of the Court.

(3) The Court may, on the application of the liquidator, by order direct that all or any part of the property of the company shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity (if any) as the Court orders, bring, or may defend, an action or other legal proceeding that relates to that property or is necessary for the purpose of effectually winding up the company and recovering its property.

(4) Where an order is made under this section, the liquidator of the company to which the order relates shall, within 14 days after the making of the order, lodge with the Registrar an office copy of the order.

Statement of affairs to be submitted to liquidator

479. (1) There shall be made out and verified by a statement in writing, and submitted to the liquidator, by the persons who were, at the date of the winding up order or, if the liquidator specifies an earlier date, that earlier date, the directors and secretary of the company a report as to the affairs of the company as at the date concerned.

(2) The liquidator may, by notice in writing served personally or by post addressed to the last known address of the person, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing and submit to him a report, containing such information as is specified in the notice as to the affairs of the company or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

(a) persons who are or have been officers of the company;

(b) where the company was formed within one year before the date of the winding up order - persons who took part in the formation of the company;

(c) persons who are in the employment of the company or were in the employment of the company within one year before the date of the winding up order and appear to the liquidator to be capable of giving the information required;

(d) persons who are, or have been within one year before the date of the winding up order, officers of, or in the employment of, a corporation that is, or within that year was, an officer of the company to the affairs of which the report relates;

(e) a person who was a provisional liquidator of the company.

(3) The liquidator may, in a notice under subsection (2), specify the information that he requires by reference to information required by this Act to be included in some other report, statement or notice under this Act.

(4) A report referred to in subsection (1) shall be submitted to the liquidator not later than 14 days after the making of the winding up order.

(5) A person required to submit a report referred to in subsection (2) shall submit it not later than 14 days after the liquidator serves notice of the requirement.

(6) Where the liquidator believes there are special reasons for so doing, he may, on an application in writing made to him before the expiration of a time limited by subsection (4) or (5), grant, by notice in writing, an extension of that time.

(7) A liquidator —

(a) shall, within 7 days after receiving a report under subsection (1) or (2), cause a copy of the report to be filed with the Court and a copy to be lodged with the Registrar; and

(b) shall, where he gives a notice under subsection (6), forthwith lodge a copy of the notice with the Registrar.

(8) A person who makes or concurs in making a report required by this section and verifying it as required by this section shall, subject to the rules, be allowed, and shall be paid by the liquidator out of the property of the company, such costs and expenses incurred in and about the preparation and making of the report and the verification of the report as the liquidator considers reasonable.

(9) A person who, without reasonable excuse, fails to comply with a provision of this section other than subsection (7) is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(10) A person who, without reasonable excuse, fails to comply with subsection (7) is guilty of an offence.

(11) In this section a reference to a liquidator includes a reference to a provisional liquidator.

Preliminary report by liquidator

480. A liquidator of a company shall, within 2 months or within such longer period as the Registrar allows, after receiving a report referred to in subsection 479(1) or (2), lodge with the Registrar a preliminary report —

(a) in the case of a company having a share capital - as to the amount of capital issued, subscribed and paid up;

(b) as to the estimated amounts of assets and liabilities of the company;

(c) if the company has failed - as to the causes of the failure; and

(d) whether, in his opinion, further inquiry is desirable with respect to a matter relating to the promotion, formation or insolvency of the company or the conduct of the business of the company.

Powers of liquidator

481. (1) The liquidator may, with the authority of the Court, of the committee of inspection or of a resolution of the creditors —

(a) carry on the business of the company so far as is necessary for the beneficial disposal or winding up of that business;

(b) subject to section 545, pay any class of creditors in full;

(c) make a compromise or arrangement with creditors or persons claiming to be creditors or having, or asserting that they have, a claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or by which the company may be rendered liable; and

(d) compromise a call, liability to a call, debt, liability capable of resulting in debt or a claim (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, or a question in any way relating to or affecting the property or the winding up of the company, on such terms as are agreed, and take security for the discharge of, and give a complete discharge in respect of, such a call, debt, liability or claim.

(2) The liquidator may —

(a) bring or defend a legal proceeding in the name and on behalf of the company;

(b) appoint a solicitor to assist him in his duties;

(c) sell or otherwise dispose of, in any manner, all or any part of the property of the company;

(d) do an act and execute in the name and on behalf of the company a deed, receipt or other document and for that purpose use when necessary the company's common or official seal;

(e) draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company;

(f) obtain credit, whether on the security of the property of the company or otherwise;

(g) take out letters of administration of the estate of a deceased contributory or debtor and do any other act necessary for obtaining payment of money due from a contributory or debtor, or from his estate, that cannot be conveniently done in the name of the company;

(h) compromise a debt due to the company, other than —

(i) a call or a liability for a call; or

(ii) a debt where the amount claimed by the company to be due to it exceeds $20,000;

(i) appoint an agent to do any business that the liquidator is unable to do himself; and

(j) do such other things as are necessary for winding up the affairs of the company and distributing its property.

(3) A liquidator of a company is entitled to inspect at any reasonable time books of the company and a person who refuses or fails to allow the liquidator to inspect such a book at such a time is guilty of an offence.

(4) The authority of the Court or of the committee of inspection, or a resolution of the creditors, is not required for the carrying on of the business of the company by the liquidator in accordance with paragraph (1)(a) during the period of 4 weeks next after the date of the winding up order.

(5) For the purpose of enabling the liquidator to take out letters of administration or to recover money as mentioned in paragraph (2)(g), the money due shall be deemed to be due to the liquidator himself.

(6) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court and a creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of those powers.

Settlement of list of contributories and application of property

482. (1) As soon as practicable after making a winding up order, the liquidator —

(a) shall settle a list of contributories;

(b) may rectify the register of members where rectification is required pursuant to this Part; and

(c) shall cause the property of the company to be collected and applied in discharge of its liabilities.

(2) Where it appears to the liquidator that it will not be necessary to make calls on or adjust the rights of contributories, the liquidator need not settle a list of contributories.

(3) In settling the list of contributories the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories by virtue of representing, or being liable for the debts of, other persons.

(4) The list of contributories, when settled in accordance with the Regulations, is evidence of the liabilities of the persons named in the list as contributories.

Exercise and control of liquidator's powers

483. (1) Subject to this Part, the liquidator shall, in the administration of the property of the company and in the distribution of the property among its creditors, have regard to any directions given by resolution of the creditors or contributories at a general meeting or by the committee of inspection, and, in case of conflict, a direction so given by the creditors or contributories prevails over a direction given by the committee of inspection.

(2) The liquidator —

(a) may convene a general meeting of the creditors or contributories for the purposes of ascertaining their wishes; and

(b) shall convene a meeting at such time as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to a particular matter arising under the winding up and the Court may make such order as is just.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of affairs and property of the company and the distribution of its property.

Release of liquidator and dissolution of company

484. When the liquidator —

(a) has realised all the property of the company or so much of that property as can, in his opinion, be realised without needlessly protracting the winding up and has distributed a final dividend (if any) to the creditors and adjusted the rights of the contributories among themselves and made a final return (if any) to the contributories; or

(b) has resigned or has been removed from his office,

he may apply to the Court for an order —

(c) that he be released; or

(d) that he be released and that the company be dissolved.

Orders for release or dissolution

485. (1) The Court —

(a) may cause a report on the accounts of the liquidator to be prepared by the auditor appointed by the Registrar under section 526 or by some other registered company auditor appointed by the Court;

(b) on the liquidator complying with all the requirements of the Court - shall take into consideration the report and any objection against the release of the liquidator that is made by the auditor or by a creditor, contributory or other person interested; and

(c) shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld and the Court is satisfied that the liquidator has been guilty of default, negligence, breach of trust or breach of duty, the Court may order the liquidator to make good any loss that the company has sustained by reason of the default, negligence, breach of trust or breach of duty and may make such other order as is just.

(3) An order of the Court releasing the liquidator discharges him from all liability in respect of an act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator but such an order may be revoked on proof that it was obtained by fraud or by suppression or concealment of a material fact.

(4) Where the liquidator has not previously resigned or been removed, his release operates as a removal from office.

(5) Where the Court has made —

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and that the company be dissolved,

the liquidator shall, within 14 days after the making of the order, lodge an office copy of the order with the Registrar.

(6) Where an order is made that the company be dissolved, the company is, from the date of the order, dissolved accordingly.

Subdivision C — General Powers of Court

Power to stay or terminate winding up

486. (1) At any time during the winding up of a company, the Court may, on the application of the liquidator or of a creditor or contributory, make an order staying the winding up either indefinitely or for a limited time or terminating the winding up on a date specified in the order.

(2) The Court may, before making such an order, direct the liquidator to furnish a report with respect to a relevant fact or matter.

(3) Where the Court has made an order terminating the winding up, the Court may give such directions as are just for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors of the company to take office upon the termination of the winding up.

(4) The costs of proceedings before the Court under this section and the costs incurred in convening a meeting of members of the company in accordance with an order of the Court under this section shall, if the Court so orders, form part of the costs, charges and expenses of the winding up.

(5) Where an order is made under this section, the company shall lodge an office copy of the order with the Registrar within 14 days after the making of the order.

Delivery of property to liquidator

487. (1) The Court may require a contributory, trustee, receiver, banker, agent or officer of a company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator of the company forthwith or within such time as the Court orders any money, property or books in his hands to which the company appears to be entitled.

(2) The Court may make an order directing a contributory for the time being on the list of contributories to pay to the company in the manner directed by the order money due from him or from the estate of the person whom he represents, but not including money payable to him or the estate by virtue of any call pursuant to this Act, and may —

(a) in the case of an unlimited company - allow to the contributory by way of set-off money due to him or to the estate that he represents from the company on an independent dealing or contract but not money due to him as a member of the company in respect of a dividend or profit; and

(b) in the case of a limited company - make to a director whose liability is unlimited or to his estate the like allowance.

(3) The Court may, when all the creditors of a company have been paid in full, allow money due on any account to a contributory from the company to the contributory by way of set-off against a subsequent call.

(4) The Court may, either before or after it has ascertained the sufficiency of the property of a company —

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of money that the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of a call so made.

(5) In making a call, the Court may take into consideration the probability that some of the contributories may fail to pay the call in whole or in part.

(6) The Court may order a contributory, purchaser or other person from whom money is due to a company to pay the amount due into a bank named in the order to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(7) Moneys paid into a bank pursuant to subsection (6) are subject in all respects to orders of the Court.

(8) An order made by the Court under this section is, subject to any right of appeal, conclusive evidence that the money appearing by the order to be due or ordered to be paid is due and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

(9) An application to the Court under this section may be made by the liquidator of the company concerned.

Appointment of special manager

488. (1) The liquidator may, if he is satisfied that the nature of the property or business of the company requires, or the interests of the creditors or contributories generally require, the appointment of a special manager of the property or business of the company other than himself, apply to the Court for the appointment of a special manager.

(2) The Court may appoint a special manager accordingly to act during such time as the Court orders with such powers, including any of the powers of a receiver or manager, as are specified in the order of the Court.

(3) The special manager —

(a) shall give such security and account in such manner as the Court orders;

(b) shall receive such remuneration as the Court fixes;

(c) may at any time resign by notice in writing addressed to the liquidator; or

(d) may, on cause shown, be removed by the Court.

Claims of creditors and distribution of property

489. (1) The Court 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 Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

(3) The Court may, in the event of the property being insufficient to satisfy the liabilities, make an order as to the payment out of the property of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Inspection of books by creditors and contributories

490. The Court may make such order for inspection of the books of company by creditors and contributories as is just and books in the possession of the company may be inspected by creditors or contributories accordingly but not otherwise.

Power to arrest absconding contributory

491. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory —

(a) is about to leave Norfolk Island; or

(b) is about to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting affairs of the company,

may cause the contributory to be arrested and held in custody and his books and movable personal property to be seized and safely kept until such time as the Court orders.

Delegation to liquidator of certain powers of Court

492. (1) Provision may be made by the rules or the regulations for enabling or requiring all or any of the powers and duties conferred and 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 paying, delivery, conveyance, surrender or transfer of money, property or books to the liquidator;

(c) the making of calls and the adjusting of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it; and

(d) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.

(2) Notwithstanding anything contained in rules or regulations made for the purposes of subsection (1), a liquidator shall not —

(a) make a call without either the leave of the Court or the sanction of the committee of inspection; or

(b) distribute a surplus among the persons entitled to it without the leave of the Court.

Division 3 — Voluntary Winding Up

Subdivision A — General

Limitation on right to wind up voluntarily

493. Where an application has been filed with the Court for the winding up of a company on the ground that it is unable to pay its debts, the company may not, without the leave of the Court, resolve that it be wound up voluntarily.

Circumstances in which company may be wound up voluntarily

494. (1) Subject to section 493, a company may be wound up voluntarily if the company so resolves by special resolution.

(2) A company shall —

(a) within 7 days after the passing of a resolution for voluntary winding up, lodge a copy of the resolution with the Registrar; and

(b) within 21 days after the passing of the resolution, cause notice of the resolution to be published in the Gazette.

(3) If the company fails to comply with the provisions of subsection (2), the company and any officer of the company who is in default are each guilty of an offence.

Commencement of winding up

495. A voluntary winding up commences at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up

496. (1) The company shall, from the commencement of winding up, cease to carry on its business except so far as the liquidator allows for the beneficial disposal or winding up of that business but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(2) A transfer of shares, not being a transfer made as allowed by the liquidator, or an alteration in the status of the members, made after the commencement of the winding up is void.

Declaration of solvency

497. (1) Where it is proposed to wind up a company voluntarily, the directors of the company, or, in the case of a company having more than 2 directors, a majority of the directors, may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, they 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 commencement of the winding up.

(2) There shall be attached to the declaration a statement of affairs of the company showing fairly —

(a) the property of the company and the total amount expected to be realised from that property;

(b) the liabilities of the company; and

(c) the estimated expenses of winding up,

made up to the last practicable date before the making of the declaration.

(3) A declaration so made does not have effect unless —

(a) the declaration is made at the meeting of directors referred to in subsection (1);

(b) the declaration is lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out or before such later date as the Registrar, whether before, on or after the first-mentioned date, allows; and

(c) the resolution for voluntary winding up is passed within the period of 5 weeks after the making of the declaration or within such further period after the making of that declaration as the Registrar, whether before or after the expiration of that period of 5 weeks, allows.

(4) A director who makes a declaration under this section (including a declaration that has no effect by reason of subsection (3)) without having reasonable grounds for his opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(5) If a company is wound up pursuant to a resolution for voluntary winding up passed within the period of 5 weeks after the making of the declaration or, if pursuant to paragraph (3)(c) the Registrar has allowed a further period after the expiration of that period of 5 weeks, within that further period but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, unless the contrary is shown, that a director who made the declaration did not have reasonable grounds for his opinion.

Subdivision B — Provisions applicable only to Members' Voluntary Winding Up

Liquidators

498. (1) The company in general meeting shall appoint a liquidator for the purpose of winding up the affairs and distributing the property of the company and may fix the remuneration to be paid to him.

(2) On the appointment of a liquidator, all the powers of the directors cease except in so far as the liquidator, or the company in general meeting with the consent of the liquidator, approves the continuance of any of those powers.

(3) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by a contributory or, if there were 2 or more liquidators, by a continuing liquidator.

(4) The meeting shall be held in the manner provided by this Act or by the articles or in such manner as, on application by a contributory or by a continuing liquidator, the Court orders.

Duty of liquidator to call creditors' meeting in case of insolvency

499. (1) Where a declaration has been made under section 497 and the liquidator is of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period specified in the declaration, he shall forthwith convene a meeting of the creditors.

(2) The liquidator shall send to each creditor with the notice convening the meeting a list setting out the names of all creditors, their addresses and the estimated amounts of their claims, as shown in the records of the company.

(3) Unless the Court otherwise orders, subsection (2) does not require the liquidator to send the list to a creditor whose debt does not exceed $200.

(4) The notice convening the meeting that is sent to a creditor to whom the liquidator is not required to send the list shall specify a place at which copies of the list can be obtained on request made orally or in writing and, where such a creditor so requests, the liquidator shall forthwith comply with the request.

(5) The notice convening the meeting shall draw the attention of the creditors to the right conferred upon them by subsection 500(2).

Proceedings at meeting

500. (1) The liquidator shall lay before the meeting a statement showing fairly the assets and liabilities of the company.

(2) The creditors may appoint some other person to be liquidator instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person, the winding up shall proceed as if the winding up were a creditors' voluntary winding up.

(4) The liquidator or, if some other person is appointed by the creditors to be liquidator, the person so appointed shall, within 7 days after a meeting has been held pursuant to subsection (1), lodge with the Registrar a notice of his appointment.

(5) If the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall proceed as if the winding up were a creditors' voluntary winding up, but the liquidator is not required to convene an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection 499(1) was held less than 3 months before the end of that year.

Subdivision C — Provisions applicable only to Creditors' Voluntary Winding Up

Meeting of creditors

501. (1) The company shall cause a meeting of the creditors of the company to be convened for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed and shall cause the notices of the meeting to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall convene a meeting at a time and place convenient to the majority in value of the creditors and shall —

(a) send to each creditor with the notice —

(i) a summary of the affairs of the company, and

(ii) a list setting out the names and addresses of all creditors and the estimated amounts of their claims as shown in the records of the company;

(b) lodge with the Registrar, within 2 days after sending the notices, a copy of the notice and of the documents that accompanied the notice in accordance with paragraph (a); and

(c) forthwith publish a copy of the notice in Norfolk Island and in each State or other Territory in which the company carried on business at any time during the preceding 2 years, in the Gazette or in a newspaper circulating in Norfolk Island or in that State or other Territory, as the case may be.

(3) Unless the Court otherwise orders, subsection (2) does not require the company to send to a creditor whose debt does not exceed $200 a list of creditors.

(4) The notice convening the meeting that is sent to a creditor to whom the company is not required to send the list shall specify a place at which copies of the list can be obtained on request made orally or in writing and, where such a creditor so requests, the company shall forthwith comply with the request.

(5) If the company fails to comply with subsection (1) or (2), the company is notwithstanding section 660, not guilty of an offence against this Act, but any officer of the company who is in default is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Proceedings at meeting

502. (1) The directors of the company shall —

(a) cause to be laid before the meeting of creditors a report verified by all the directors, as to the affairs of the company, made up to the last practicable date before the notices of the meeting were sent; and

(b) appoint one of their number to attend the meeting.

Penalty: 10 penalty units or imprisonment or both.

(2) The director so appointed and a secretary shall attend the meeting and disclose to the meeting the affairs of the company and the circumstances leading up to the proposed winding up.

Penalty: 10 penalty units or imprisonment or both.

(3) The directors of the company shall, not later than 7 days after the report referred to in paragraph (1)(a) is laid before the meeting of the creditors as mentioned in that paragraph, lodge a copy of the report with the Registrar.

Penalty: 10 penalty units or imprisonment or both.

(4) The creditors may appoint one of their number or the director appointed under subsection (1) to preside at the meeting.

(5) The chairman shall, at the meeting, determine whether the meeting has been held in accordance with the requirements of this Sub-division and his decision is final.

(6) The creditors may determine the matters referred to in paragraphs 535(1)(a) and (b) and, where the creditors so determine those matters, a meeting of the creditors for the purposes of section 535 shall be deemed to have been held and the determinations shall be deemed to have been made under that section.

Adjournment of meeting

503. (1) A meeting convened under section 501 may by resolution be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than 21 days after the date for which the meeting was originally convened.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a date later than 10 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the date, time and place of the resumption of the meeting to be published in the Gazette or in a newspaper circulating in Norfolk Island at least 7 days before the date of the resumption of the meeting.

(4) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, a resolution passed at the meeting of the creditors has effect as if it had been passed immediately after the passing of the resolution for winding up.

Liquidators

504. (1) The company shall, and the creditors may, at their respective meetings nominate a person to be liquidator for the purpose of winding up the affairs and distributing the property of the company.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator but, if no person is nominated by the creditors, the person nominated by the company shall be liquidator.

(3) Where different persons are nominated, a director or member may, within 7 days after the date on which the nomination was made by the creditors, apply to the Registrar for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(4) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.

(5) On the appointment of a liquidator, the powers of the directors cease except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance of any of those powers.

(6) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates his office, the creditors may fill the vacancy and, for the purpose of so doing, a meeting of the creditors may be convened by any 2 of their number.

Execution and civil proceedings

505. (1) An attachment, sequestration, distress or execution put in force against the property of the company after the commencement of a creditors' voluntary winding up is void.

(2) After the commencement of the winding up, no action or other civil proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

(3) The Court may require a contributory, trustee, receiver, bank, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith or within such time as the Court directs to the liquidator any money, property or books in his hands to which the company appears to be entitled.

Subdivision D — Provisions applicable to every Voluntary Winding Up

Distribution of property of company

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

Appointment of liquidator

507. If there is no liquidator acting, the Registrar may appoint a liquidator.

Removal of liquidator

508. The Registrar may, on cause shown, remove a liquidator and appoint another liquidator.

Review of liquidator's remuneration

509. A member or creditor, or the liquidator, may at any time before the dissolution of the company apply to the Registrar to review the amount of the remuneration of the liquidator.

Validity of transactions, etc

510. (1) A conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of a person taking the property in good faith and for value and without actual knowledge of the defect or irregularity.

(2) A person making or permitting a disposition of property to a liquidator is protected and indemnified in so doing notwithstanding a defect of irregularity affecting the validity of the winding up or the appointment of the liquidator that is not then known to that person.

(3) For the purposes of this section, a disposition of property includes a payment of money.

Powers and duties of liquidator

511. (1) The liquidator may —

(a) in the case of a members' voluntary winding up, with the approval of a special resolution of the company or, in the case of a creditors' voluntary winding up, with the approval of the Court or of the committee of inspection or, if there is no such committee, of a meeting of creditors, exercise any of the powers given by paragraphs 481(1)(b), (c) and (d) to a liquidator in a winding up by the Court;

(b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power under section 482 of a liquidator appointed by the Court to settle a list of contributories;

(d) exercise the power of the Court of making calls;

(e) exercise the power of the Court of fixing a time within which debts and claims must be proved; or

(f) convene a general meeting of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) A list of contributories settled in accordance with paragraph (1)(c) is evidence of the liability of the persons named in the list to be contributories.

(3) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(4) When several liquidators are appointed, a power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such a determination, by any 2 or more of them.

Power of liquidator to accept shares, etc, as consideration for sale

512. (1) Where it is proposed that the whole or a part of the business or property of a company (in this section referred to as "the company"), be transferred or sold to some other corporation (in this section referred to as "the corporation"), the liquidator of the company, may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of a particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, debentures, policies or other like interests in the corporation for distribution among the members of the company or may enter into some other arrangement under which the members of the company may, in lieu of or in addition to receiving cash, shares, debentures, policies or other like interests, participate in the profits of, or receive some other benefit, from the corporation.

(2) Such a transfer, sale or arrangement is binding on the members of the company.

(3) If a member of the company who did not vote in favour of the special resolution expresses his dissent from the resolution by writing addressed to the liquidator and left at the office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration as provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(5) A special resolution is not invalid for the purposes of this section by reason that it was passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators but, if an order for winding up the company by the Court is made within one year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

(6) The appointment of an arbitrator may be made under the hand of the liquidator or, if there is more than one liquidator, under the hands of any 2 or more of the liquidators.

(7) The Court may give directions necessary for the initiation and conduct of the arbitration and such a direction is binding on the parties.

(8) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or of the committee of inspection.

Annual meeting of creditors

513. (1) If the winding up continues for more than one year, the liquidator shall, within 3 months after the end of the first year from the commencement of the winding up and at the end of each succeeding year —

(a) in the case of a members' voluntary winding up - convene a general meeting of the company; or

(b) in the case of a creditors' voluntary winding up - convene a general meeting of the company and a meeting of the creditors.

(2) The liquidator shall lay before the meeting or each meeting an account of his acts and dealings and of the conduct of the winding up during that first year or that succeeding year, as the case may be.

(3) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

Final meeting and dissolution

514. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of.

(2) When the account is so made up, he shall convene a general meeting of the company, or in the case of a creditors' voluntary winding up, a meeting of the members and creditors of the company, for the purpose of laying before it the account and giving any explanation of the account.

(3) The meeting shall be convened by an advertisement published in the Gazette at least one month before the meeting specifying the date, time, place and purpose of the meeting.

(4) The liquidator shall, within 7 days after the meeting, lodge with the Registrar a return of the holding of the meeting and of its date with a copy of the account attached to the return.

(5) At a meeting of the company, 2 members constitute a quorum and, at a meeting of the members and creditors of the company, 2 members and 2 creditors constitute a quorum.

(6) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in subsection (4), lodge a return with his account attached stating that the meeting was duly convened and that no quorum was present.

(7) Subject to subsection (8), on the expiration of the period of 3 months after the lodging of the return the company is dissolved.

(8) On the application of the liquidator or of some other party who appears to the Court to be interested, the Court may, before the expiration of the period of 3 months referred to in subsection (7), by order, declare that that subsection is not to apply in relation to the company and shall specify the date on which the company is to be dissolved.

(9) Where the Court makes such an order, the company is dissolved on the date specified in the order.

(10) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge with the Registrar an office copy of the order and, if he fails so to do, he is guilty of an offence.

Binding of arrangement on creditors

515. (1) An arrangement entered into between a company about to be or in the course of being wound up and its creditors is, subject to subsection (4) —

(a) binding on the company if sanctioned by a special resolution;

(b) binding on the creditors if a resolution in favour of the arrangement is passed at a meeting of creditors by a majority of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to not less than 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy.

(2) A creditor shall be taken to be a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company, appears to be the balance due to him.

(3) A dispute with regard to the value of a security or lien or the amount of a debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) A creditor or contributory may, within 3 weeks after the completion of the arrangement, appeal to the Court in respect of the arrangement, and the Court may confirm, set aside or modify the arrangement and make such further order as it thinks just.

Application to Court to have questions determined or powers exercised

516. (1) The liquidator, a contributor or a creditor may apply to the Court —

(a) to determine a question arising in the winding up of a company; or

(b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

(2) The Court may, if it is satisfied that the determination of the question or the exercise of power will be just and beneficial, accede in whole or in part to the application on such terms and conditions as are just or may make such other order on the application as is just.

Costs

517. All proper costs, charges and expenses of and incidental to the winding up (including the remuneration of the liquidator) are payable out of the property of the company in priority to all other claims.

Division 4 — Provisions applicable to every Mode of Winding up

Subdivision A — General

Interpretation

518. In this Subdivision, unless the contrary intention appears, "liquidator" includes a provisional liquidator.

Books to be kept by liquidator

519. (1) A liquidator shall keep proper books, in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed.

(2) A creditor or contributory may, unless the Court otherwise orders, personally or by his agent inspect books so kept.

Disqualification of liquidators

520. (1) Subject to this section, a person shall not consent to be appointed, and shall not act, as liquidator of a company unless he is —

(a) a registered liquidator; or

(b) registered as a liquidator of that company.

(2) Subject to this section, a person shall not, except with the leave of the Court, seek to be appointed, or act, as liquidator of a company —

(a) if he, or a corporation of which he is a member, is indebted in an amount exceeding $5,000 to the company or to a related corporation;

(b) if he is, otherwise than in his capacity as liquidator, a creditor of the company or of a related corporation in an amount exceeding $5,000; or

(c) if he is —

(i) an officer of the company (otherwise than by reason of being a liquidator of the company or of a related corporation);

(ii) an officer of a corporation that is a mortgagee of property of the company;

(iii) an auditor of the company;

(iv) a partner or employee of an auditor of the company;

(v) a partner, employer or employee of an officer of the company; or

(vi) a partner or employee of an employee of an officer of the company.

(3) Subsection (1) and paragraph (2)(c) do not apply to a members' voluntary winding up of an exempt proprietary company or of a proprietary company that is a subsidiary of a public company.

(4) Paragraph (2)(c) does not apply to a creditors' voluntary winding up if, by a resolution carried by a majority of the creditors in number and value present and voting, either in person or by proxy, at a meeting of which 7 days' notice has been given to each creditor stating the purpose of the meeting, it is determined that that paragraph shall not so apply.

(5) For the purposes of subsection (2), if a person —

(a) is an officer or auditor of a related corporation; or

(b) except where the Registrar, in the circumstances, directs that this paragraph shall not apply in relation to the person - has, at a time within the immediately preceding period of 2 years, been an officer, auditor or promoter of the company or of a related corporation,

the person shall be deemed to be an officer or auditor of the company.

(6) A person shall not consent to be appointed, and shall not act, as liquidator of a company if he is an insolvent under administration.

(7) A person shall not consent to be appointed, and shall not act, as liquidator of a company that is being wound up by order of the Court unless he is an official liquidator.

(8) A person shall not act as liquidator of a company unless, before his appointment, he consented in writing to act as liquidator of the company.

Penalty: 10 penalty units or imprisonment or both.

Reports by liquidator

521. (1) If it appears to the liquidator of a company, in the course of a winding up of the company, that —

(a) a past or present officer, or a member or contributory, of the company has been guilty of an offence under the law of Norfolk Island in relation to the company;

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the company —

(i) has misapplied or retained, or has become liable or accountable for, money or property of the company; or

(ii) has been guilty of a negligence, default, breach of duty or breach of trust in relation to the company; or

(c) the company may be unable to pay its unsecured creditors more than 50 cents in the dollar,

the liquidator shall —

(d) forthwith report the matter to the Registrar and state in the report whether he proposes to make an application for an examination or for an order under section 623; and

(e) furnish the Registrar with such information, and give to him such access to and facilities for inspecting and taking copies of documents, as the Registrar requires.

(2) The liquidator may also, if he thinks fit, lodge with the Registrar further a report specifying any other matter that, in his opinion, it is desirable to bring to the notice of the Registrar.

(3) If it appears to the Court that, in the course of the winding up of a company —

(a) a past or present officer, or a contributory or member, of the company has been guilty of an offence under the law of Norfolk Island in relation to the company; or

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the company has engaged in conduct referred to in paragraph (1)(b) in relation to the company,

and that the liquidator has not made a report to the Registrar with respect to the matter, the Court may, on the application of a person interested in the winding up or of its own motion, direct the liquidator to make such a report.

Liquidators to enjoy qualified privilege in certain circumstances

522. (1) A liquidator is not, in the absence of malice on his part, liable to an action for defamation in respect of a statement that he has made in the course of his duties as liquidator, whether the statement is made orally or in writing.

(2) This section does not affect any other right, privilege or immunity that a liquidator some other person has as defendant in an action for defamation.

Supervision of liquidators

523. **(1)** If —

(a) it appears to the Court or to the Registrar that a liquidator has not faithfully performed or is not faithfully performing his duties or has not observed or is not observing —

(i) an order of the Court; or

(ii) a requirement of this Act or of the regulations or rules; or

(b) a complaint is made to the Court or to the Registrar by a person with respect to the conduct of a liquidator in connection with the performance of his duties,

the Court or the Registrar, as the case may be, may inquire into the matter and, where the Court or the Registrar so inquires, the Court may take such action as is just.

(2) The Registrar may report to the Court a matter that, in his opinion, is a misfeasance, neglect or omission on the part of a liquidator and the Court may order the liquidator to make good any loss that the estate of the company has sustained by reason of the misfeasance, neglect or omission and may make such other order as is just.

(3) The Court may at any time require a liquidator to answer an inquiry in relation to the winding up and may examine him or any other person on oath or affirmation concerning the winding up and may direct an investigation to be made of the books of the liquidator.

Notice of appointment and address of liquidator

524. **(1)** A liquidator shall, within 14 days after his appointment, lodge with the Registrar notice of his appointment and of the address of his office and, in the event of a change in the address of his office, shall, within 14 days after the change, lodge with the Registrar notice of the change.

(2) A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Registrar notice of the resignation or removal.

Regulations relating to money, etc, received by liquidator

525. **(1)** The regulations may —

(a) require a liquidator to pay, into such bank and account, in such manner at such times as are prescribed, money received by him;

(b) prescribe the circumstances and manner which money paid into such an account is to be paid out;

(c) require a liquidator of a company to deposit, in such bank, in such manner and at such times as are prescribed, bills, notes or other securities payable to the company or its liquidator;

(d) prescribe the circumstances and manner in which bills, notes or other securities so deposited are to be delivered out;

(e) make provision for and in relation to the giving by the Court of directions with respect to the payment, deposit or custody and money payable to or into the possession of a liquidator, or of bills, notes or other securities so payable; and

(f) provide for —

(i) the payment by a liquidator of interest at such rate, on such amount and in respect of such period as is prescribed;

(ii) disallowance of all or of such part as is prescribed of the remuneration of a liquidator;

(iii) the removal from office of a liquidator by the Court; and

(iv) the payment by a liquidator of any expenses occasioned by reason of his default,

where a liquidator contravenes or fails to comply with Regulations made under this section.

(2) Regulations made under this section may apply generally or in relation to windings up included in a particular class of windings up.

Liquidator's accounts

526. (1) A liquidator shall, within one month after the expiration of the period of 6 months after the date of his appointment and of each subsequent period of 6 months during which he acts as liquidator and within one month after he ceases to act as liquidator, lodge with the Registrar —

(a) an account verified by a statement in writing showing fairly —

(i) his receipts and his payments during each such period or, where he ceases to act as liquidator, 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 requires, up to the date of his so ceasing to act; and

(ii) in the case of the second account lodged under this subsection and all subsequent accounts - the aggregate amount of receipts and payments during all preceding periods since his appointment; and

(b) in the case of a liquidator other than a provisional liquidator, a statement showing fairly the position of the winding up.

(2) The Registrar may cause such an account or statement to be audited by a registered company auditor, who shall prepare a report on the account or statement.

(3) For the purposes of an audit under subsection (2), the liquidator shall furnish the auditor with such books and information as the auditor requires.

(4) Where the Registrar causes an account or statement to be audited under subsection (2) —

(a) the Registrar shall furnish to the liquidator a copy of the report prepared by the auditor; and

(b) section 55(3) applies in relation to the report as if it were a document required to be lodged with the Registrar.

(5) The liquidator shall give notice that the account has been made up to each creditor and contributory when next forwarding a report, notice of meeting, notice of call or dividend.

(6) The costs of an audit under this section shall be fixed by the Registrar and form part of the expenses of winding up.

Liquidator to make good defaults

527. (1) If a liquidator who has made default in lodging or making an application, return, account or other document, or in giving a notice that he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of a contributory or creditor of the company or of the Registrar, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) The order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Subsection (1) does not affect the operation of a law imposing penalties on a liquidator in respect of such a default.

Notification that a corporation is in liquidation

528. (1) Where a corporation is being wound up, in each business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the corporation, there shall be set out after the name of the corporation where it first appears the words "In liquidation".

(2) If default is made in complying with this section, the corporation and any officer of the corporation or liquidator who is in default are each guilty of an offence.

Books of company

529. (1) Where a company is being wound up, all books 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 are, as between the contributories of the company, evidence of the correctness of the matters recorded in those books.

(2) If a company has been wound up, the liquidator shall retain the books referred to in subsection (1) for a period of 5 years from the date of dissolution of the company and may, at the expiration of that period, destroy them.

(3) Notwithstanding subsection (2) but subject to subsection (4), when a company has been wound up, the books referred to in subsection (1) may be destroyed within a period of 5 years after the dissolution of the company —

(a) in the case of a winding up by the Court - in accordance with an order of the Court made pursuant to an application of which not less than 14 days, notice has been given to the Registrar;

(b) in the case of a members' voluntary winding up - in accordance with a resolution of the company; or

(c) in the case of a creditors' voluntary winding up - as the committee of inspection directs, or, if there is no such committee, as the creditors of the company direct.

(4) The liquidator shall not destroy books as mentioned in paragraph (3)(b) or (c) unless the Registrar consents to the destruction of the books.

Investment of surplus funds on general account

530. (1) Whenever the cash balance standing to the credit of a company that is in the course of being wound up is in excess of the amount that, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the property of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by a creditor orders otherwise, invest the sum or a part of the sum —

(a) in a manner in which trustees are for the time being authorised by law to invest trust moneys;

(b) on deposit with a corporation that is declared, pursuant to this Act, to be an authorised dealer in the short term money market; or

(c) on deposit at interest with a bank,

(2) Interest received in respect of money so invested forms part of the property of the company.

(3) Whenever a part of money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer demands in respect of the property of the company, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator, may arrange for the repayment of such part of the moneys as is necessary.

Unclaimed moneys to be paid to Administration

531. (1) Where a liquidator of a company has in his hands or under his control —

(a) an amount being a dividend that has or other moneys that have remained unclaimed for more than 6 months after the date when the dividend or other moneys became payable; or

(b) after making a final distribution, unclaimed or undistributed moneys arising from the property of the company,

he shall forthwith pay those moneys to the Administration.

(2) The Court may at any time on the application of the Registrar —

(a) order a liquidator of a company to submit to the Registrar an account, verified by affidavit, of unclaimed or undistributed funds, dividends or other moneys in his hands or under his control;

(b) direct an audit of accounts so submitted; and

(c) order a liquidator of a company to pay moneys referred to in paragraph (a) to the Administration.

(3) Where a liquidator of a company pays moneys to the Administration pursuant to subsection (1) or to an order of the Court made under paragraph (2)(c), the Registrar shall give to the liquidator a receipt for the moneys and the giving of that receipt discharges the liquidator from liability in respect of the moneys.

(4) For the purposes of this section, the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a company and the provisions of this Act with respect to the exercise of those powers apply, with such adaptations (if any) as are prescribed, to proceedings under this section.

(5) This section does not, except as expressly provided by this Act, deprive a person of any other right or remedy to which he is entitled against the liquidator or some other person.

(6) Where a person claims to be entitled to moneys paid to the Administration under this section, the Registrar shall, if he is satisfied that the person is so entitled, direct payment to the person by the Administration of an equivalent amount.

(7) Where a person claims to be entitled to moneys that have been paid to some other person in accordance with this section, the Registrar or the Administration is not under any liability to the first-mentioned person in respect of those moneys but, if the first-mentioned person is entitled to those moneys, he may recover those moneys from the other person.

Expenses of winding up where property insufficient

532. (1) Subject to this section, a liquidator shall not incur an expense in relation to the winding up of a company unless there is sufficient available property to meet the liability.

(2) The Court or the Registrar may, on the application of a creditor or of a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Court or the Registrar so directs, gives such reasonable security to secure the amount of the indemnity as the Court or the Registrar specifies.

(3) This section does not relieve a liquidator of an obligation to make a report under section 521 or to lodge a document with the Registrar by reason only that he would be required to incur expense in order to do so.

Resolutions passed at adjourned meetings

533. Subject to subsection 503(4), where a resolution is passed at an adjourned meeting of creditors or contributories, 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 an earlier date.

Meetings to ascertain wishes of creditors or contributories

534. (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved.

(2) The Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be convened, held and conducted as the Court directs and may appoint a person to act as chairman of the meeting and to report the result of the meeting to the Court.

(3) In the case of creditors, the Court shall have regard to the value of each creditor's debt.

(4) In the case of contributories, the Court shall have regard to the number of votes conferred on each contributory by this Act or by the articles.

Subdivision B — Committees of Inspection

Convening of meeting for appointment of committee of inspection

535. (1) The liquidator of a company shall, if so requested by a creditor or contributory, convene separate meetings of the creditors and contributories for the purpose of determining —

(a) whether a committee of inspection should be appointed; and

(b) where a committee of inspection is to be appointed —

(i) the numbers of members to represent the creditors and the contributories, respectively; and

(ii) the persons who are to be members of the committee representing creditors and contributories, respectively.

(2) If there is a difference between the determination of the meeting of the creditors and the determination of the meeting of contributories, the Court may resolve the difference and make such order as is just.

(3) A person is not eligible to be appointed a member of a committee of inspection unless he is —

(a) in the case of an appointment by creditors of the company —

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a power of attorney given by the creditor; or

(iii) a person authorised in writing by a creditor of the company to be a member of the committee of inspection; or

(b) in the case of an appointment by the contributories of the company —

(i) a contributory of the company;

(ii) the attorney of a contributory of the company by virtue of a power of attorney given by the contributory; or

(iii) a person authorised in writing by a contributory of the company to be a member of the committee of inspection.

Proceedings of committee of inspection

536. (1) A committee of inspection shall meet at such times and places as its members from time to time appoint.

(2) The liquidator or a member of the committee may convene a meeting of the committee.

(3) A committee may act by a majority of its members present at a meeting but shall not act unless a majority of its members are present.

Vacancies in committee of inspection

537. (1) A member of a committee may resign by notice in writing signed by him and delivered to the liquidator.

(2) If a member of a committee —

(a) becomes an insolvent under administration; or

(b) is absent from 3 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be,

his office becomes vacant.

(3) A member of the committee who represents creditors may be removed by a resolution at a meeting of creditors of which 7 days' notice has been given stating the object of the meeting and a member of the committee who represents contributories may be removed by a resolution at a meeting of contributories of which such notice has been given.

(4) A meeting referred to in subsection (3) may appoint a person to fill a vacancy caused by the removal of a member.

(5) A vacancy in the committee may be filled by the appointment of a person by a resolution at a meeting of the creditors or of the contributories, as the case may be, of which 7 days' notice has been given.

(6) A vacancy in the committee that is not filled as provided by subsection (4) or (5) may be filled by the appointment of a person by the committee and a person so appointed represents the creditors, or the contributories, as the case may be.

(7) Notwithstanding a vacancy in the committee, the continuing members of the committee may act provided they are not less than 2 in number.

Member of committee not to accept extra benefit

538. (1) A member of a committee of inspection shall not, while as such a member, except as provided by this Act or with the leave of the Court —

(a) make an arrangement for receiving, or accept, from the company or from some other person, in connection with the winding up, a gift, remuneration or pecuniary or other consideration or benefit;

(b) directly or indirectly derive profit or advantage from a transaction, a sale or purchase for or on account of the company or a gift, profit or advantage from a creditor; or

(c) directly or indirectly become the purchaser of property of the company.

(2) A transaction entered into in contravention of subsection (1) may be set aside by the Court on the application of a creditor or member of the company.

Powers of Court where no committee of inspection

539. Where there is no committee of inspection of a company, the Court may, on the application of the liquidator, do a thing and give a direction or permission that is by this Part authorised or required to be done or given by such a committee.

Subdivision C — Proof and Ranking of Claims

Interpretation

540. In this Subdivision —

"liability" includes —

(a) compensation for work or labour done;

(b) an obligation or possible obligation to pay money or money's worth on the breach of an express or implied covenant, contract, agreement or undertaking, whether or not the breach occurs, is likely to occur or is capable of occurring, before the dissolution of the company;

(c) an express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is —

(i) in respect of amount - fixed or unliquidated;

(ii) in respect of time - present or future;

(iii) certain or dependent on a contingency; or

(iv) in respect of the manner of valuation - capable of being ascertained by fixed rules or only as matter of opinion;

"the relevant date" means —

(a) in the case of a company ordered to be wound up by the Court that has not previously commenced to be wound up voluntarily - the date of the order for winding up; and

(b) in any other case - the date of the commencement of the winding up.

Provable debts

541. (1) Subject to this Subdivision, all debts and liabilities, present or future, certain or contingent, to which a company was subject at the relevant date, or to which the company may become subject before the dissolution of the company by reason of an obligation incurred before the relevant date, are provable debts in the winding up.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in a winding up in insolvency.

(3) Penalties or fines imposed by a court in respect of an offence are not provable.

(4) The liquidator shall make an estimate of the value of a provable debt or liability that, by reason of its being subject to a contingency or for some other reason, does not bear a certain value.

(5) A person aggrieved by an estimate so made may appeal to the Court.

(6) If the Court finds that the value of the debt or liability cannot be fairly estimated, the debt or liability is not provable in the winding up.

(7) If the Court finds that the value of the debt or liability can be fairly estimated, the Court shall assess the value of the debt or liability.

Insolvent companies

542. Subject to sections 256 and 545, in the winding up of an insolvent company the same rules prevail and shall be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the *Bankruptcy Act 1966* of the Commonwealth, in relation to the estates of bankrupt persons, and all persons who in such a case would be entitled to prove for and receive dividends out of the property of the company may come in under the winding up and make such claims against the company as they are entitled to by virtue of section 541.

Computation of debts

543. The amount of a debt (including a debt that is for or includes interest) shall be computed for the purposes of the winding up as at the relevant date.

Debts proved to rank equally except as otherwise provided

544. Except as otherwise provided by this Act, all debts proved in a winding up rank equally and, if the property of the company is insufficient to meet them in full, they shall be paid proportionately.

Priority payments

545. (1) Subject to the following provisions of this Subdivision, in the winding up of a company the following debts shall be paid in priority to all other unsecured debts:

(a) first, the costs, charges and expenses of the winding up, including the taxed costs of an applicant payable under section 470, the remuneration of the liquidator and the costs of any audit carried out under section 526;

(b) if the winding up was preceded by the appointment of a provisional liquidator - second, the costs, charges and expenses properly and reasonably incurred by the provisional liquidator during the period of his appointment and his remuneration;

(c) where the winding up commences within 2 months after the end of a period of official management of the company - third, the costs, charges and expenses of and incidental to the official management properly and reasonably incurred by the official manager during the period of official management, including the remuneration of the official manager, of any deputy official manager and of any auditor appointed in accordance with Division 3 of Part XVI;

(d) where the winding up commenced within 2 months after the end of a period of official management of the company - fourth, debts of the company properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management;

(e) fifth, wages in respect of services rendered to the company by employees before the relevant date, but not exceeding $2,000 in respect of an employee who is a director of the company;

(f) sixth, amounts due in respect of injury compensation, being compensation the liability for which arose before the relevant date;

(g) seventh, amounts due before the relevant date to or in respect of an employee of the company (whether remunerated by salary, wages, commission or otherwise), in respect of leave of absence, being amounts due by virtue of an industrial instrument;

(h) eighth, retrenchment payments payable to eligible employees of the company but not exceeding in respect of a particular employee the amount ascertained in accordance with subsection (2) in relation to him.

(2) For the purposes of paragraph (1)(h), the amount ascertained in accordance with this subsection in relation to an eligible employee of a company is the lesser of —

(a) so much of the retrenchment payment, or of the total of the retrenchment payments, payable by the company to the employee as is attributable to the period in the employment of the company that had been completed by the employee as at the prescribed date in relation to the employee; and

(b) the amount ascertained in accordance with the formula —

$$\frac{3AB}{5},$$

where —

A is the number of years in the employment of the company that had been completed by the employee as at the prescribed date in relation to the employee; and B is the lesser of —

(i) the amount of the last estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth published by the Australian Statistician before the prescribed date in relation to the employee, or, if the Australian Statistician ceases before that prescribed date to publish such estimates, the amount prescribed in relation to the period in which that prescribed date occurs; and

(ii) the notional weekly wages of the employee.

(3) For the purposes of subsection (2), where —

(a) by virtue of an industrial instrument, a retrenchment payment is payable by a company to an eligible employee of the company; and

(b) the industrial instrument makes provision for a method of ascertaining the number of years in the employment of the company that had been completed by the employee as at a particular date,

the number of years in the employment of the company that had been completed by the employee as at the prescribed date in relation to the employee shall be calculated in accordance with that method.

(4) In this section —

"company" means a company that is being wound up;

"eligible employee", in relation to a company, means an employee of the company (other than an employee of the company who is a director of the company), whether remunerated by salary, wages, commission or otherwise, being an employee whose employment by the company —

(a) is terminated before the relevant date; or

(b) commenced before, and is terminated on or after, the relevant date;

"notional weekly wages", in relation to an eligible employee of a company, means the amount ascertained in accordance with the formula

$$\frac{7C}{D},$$

where —

C is so much of the wages paid or payable to or in respect of the employee as is attributable to service by the employee as an employee of the company during the period specified in a determination in relation to the employee that is in force under subsection (5); and

D is the number of days in that period;

"the prescribed date", in relation to an eligible employee of a company, means —

(a) in the case of an employee whose employment by the company is terminated before the relevant date - the date on which that employment is terminated; or

(b) in any other case - the relevant date;

"retrenchment payment", in relation to an eligible employee of a company, means an amount payable by the company to the employee, by virtue of an industrial instrument, in respect of the termination of the employee's employment by the company, whether the amount becomes payable before, on or after the relevant date.

(5) The liquidator of a company may, in relation to —

(a) a particular eligible employee of the company; or

(b) eligible employees of the company included in a class of eligible employees of the company the prescribed date in relation to whom is the same date,

make a determination in writing specifying for the purposes of this section a period ending on the prescribed date in relation to the employee or employees and not exceeding one year.

Debts due to employees

546. (1) Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract is, whether or not he is a person referred to in subsection (2), entitled to payment under section 545 as if his services with the company had been terminated by the company on the relevant date.

(2) Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company were terminated by reason of the winding up, that person shall, for the purpose of calculating an entitlement to payment for leave of absence, be deemed, while the liquidator employs him for those purposes, to be employed by the company.

(3) Subject to subsection (4), where, after the relevant date, an amount in respect of long service leave or extended leave becomes due to a person referred to in subsection (2) in respect of the employment so referred to, the amount is a cost of the winding up.

(4) Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him to an amount in respect of long service leave or extended leave, but by the operation of subsection (2) he becomes entitled to such an amount after that date, that amount —

(a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his qualifying service after the relevant date bears to the total length of his qualifying service; and

(b) shall, to the extent of the balance of that amount, be deemed to be an amount referred to in paragraph 545(1)(g).

Debts of a class to rank equally

547. After provision is made for the costs, charges and expenses referred to in paragraph 545(1)(a), the debts of a class referred to in each of the other paragraphs of subsection 545(1) rank equally between themselves and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall be paid proportionately.

Advances in respect of wages and leave of absence

548. Where a payment has been made by a company on account of wages, or in respect of leave of absence under an industrial instrument, being a payment made out of money advanced by a person for the purpose of making the payment, the person by whom the money was advanced has, in the winding up of the company, the same right of priority of payment in respect of the money so advanced and paid, but not exceeding the amount by which the sum in respect of which the person who received the payment would have been entitled to priority in the winding up has been diminished by reason of the payment, as the person who received the payment would have had if the payment had not been made.

Priority of employees' claims over floating charges

549. So far as the property of a company available for payment of creditors other than secured creditors is insufficient to meet payment of —

(a) a debt referred to in paragraphs 545(1)(e) or (g);

(b) an amount that pursuant to subsection 546(3) or (4) is a cost of the winding up, being an amount that, if it had been payable on or before the relevant date, would have been a debt referred to in paragraph 545(1)(e) or (g); and

(c) an amount in respect of which a right of priority is given by section 548,

payment of that debt or amount shall be made in priority over the claims of the chargee in relation to a floating charge created by the company and may be made accordingly out of property comprised in or subject to that charge.

Insurance against liabilities to third parties

550. (1) Where a company is, under a contract of insurance entered into before the relevant date, insured against liability to third parties, then, if such a liability is incurred by the company (whether before or after the relevant date) and an amount in respect of that liability has been or is received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in that amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability, or any part of that liability remaining undischarged, in priority to all payments in respect of the debts mentioned in subsection 545(1).

(2) If the liability of the insurer to the company is less than the liability of the company to the third party, subsection (1) does not limit the rights of the third party in respect of the balance.

(3) This section has effect notwithstanding an agreement to the contrary.

Provisions relating to injury compensation

551. (1) Paragraph 545(1)(f) does not apply in relation to the winding up of a company where —

(a) the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the injury compensation has, on the reconstruction or amalgamation, been preserved to the person entitled to it; or

(b) the company has entered into a contract with an insurer in respect of liability for injury compensation.

(2) Where injury compensation is payable by way of periodical payments, the amount of that compensation shall, for the purposes of paragraph 545(1)(f), be taken to be the lump sum for which those periodical payments could, if redeemable, be redeemed under the law under which the periodical payments are made.

Power of Court to make orders in favour of certain creditors

552. Where in a winding up —

(a) property has been recovered under an indemnity for costs of litigation given by certain creditors or has been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or

(b) expenses in relation to which a creditor has indemnified a liquidator have been recovered,

the Court may make such orders as are just with respect to the distribution of that property and the amount of those expenses so recovered, with a view to giving those creditors an advantage over others in consideration of the risk assumed by them.

Subdivision D — Effect on other Transactions

Undue preference

553. (1) A settlement, a conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a company that, if it had been made or incurred by a natural person, would, in the event of his becoming a bankrupt under the *Bankruptcy Act 1966* of the Commonwealth, be void as against the trustee in the bankruptcy, is, in the event of the company being wound up, void as against the liquidator.

(2) For the purposes of subsection (1), the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person is —

(a) in the case of a winding up by the Court —

(i) where, before the filing of the application for the winding up, a resolution was passed by the company for winding up the company voluntarily - the date upon which that resolution voluntarily was passed;

(ii) where the company was under official management at the time of the filing of the application for the winding up or was under official management at any time within the period of 6 months before the filing of the application - the date of the commencement of the official management; or

(iii) in any other case - the date of the filing of the application for the winding up; and

(b) in the case of a voluntary winding up —

(i) where the company was under official management at the time when the resolution to wind up the company voluntarily was passed or was under official management at any time within the period of 6 months before the passing of that resolution - the date of the commencement of the official management; or

(ii) in any other case - the date upon which the resolution to wind up the company voluntarily was passed.

(3) For the purposes of this section, the date that corresponds with the date on which a person becomes a bankrupt is the date on which the winding up of the company commences or is to be deemed to have commenced.

(4) A transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

Effect of floating charge

554. A floating charge on the undertaking or property of a company created within 6 months before the commencement of the winding up of the company is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid except to the amount of any moneys paid 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 8% per annum or, if some other rate is prescribed, at that other rate.

Liquidator's right to recover in respect of certain transactions

555. (1) Where property or a business or undertaking has been acquired by a company for a cash consideration within a period of 4 years before the commencement of the winding up of the company —

(a) from a promoter of the company, from a spouse of such a promoter or from a relative of such a promoter or spouse;

(b) from a person who was, at the time of the acquisition, a director of the company, from a spouse of such a director or from a relative of such a person or spouse;

(c) from a corporation that was, at the time of the acquisition, related to the company; or

(d) from a person who was, at the time of the acquisition, a director of a corporation that was related to the company, from a spouse of such a person or from a relative of such a person or spouse,

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

(2) Where property or a business or undertaking has been sold by a company for a cash consideration within a period of 4 years before the commencement of the winding up of the company —

(a) to a promoter of the company, to a spouse of such a promoter or to a relative of such a promoter or spouse;

(b) to a person who was, at the time of the sale, a director of the company, to a spouse of such a director or to a relative of such a person or spouse;

(c) to a corporation that was, at the time of the sale, related to the company; or

(d) to a person who was, at the time of the sale, a director of a corporation that was related to the company, to a spouse of such a director or to a relative of such a person or spouse,

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

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of goodwill, profits or gain that might have been made from the property, business or undertaking.

(4) In this section, "cash consideration" means consideration payable otherwise than by the issue of shares in the company.

(5) Where —

(a) a disposition of property is made by a company within the period of 6 months before the commencement of the winding up of the company;

(b) the disposition of property confers a preference upon a creditor of the company; and

(c) the disposition of property has the effect of discharging an officer of the company from a liability (whether under a guarantee or otherwise and whether contingent or otherwise),

the liquidator —

(d) in a case to which paragraph (e) does not apply - may recover from that officer an amount equal to the value of the relevant property; or

(e) where the liquidator has recovered from the creditor in respect of the disposition of the relevant property —

(i) an amount equal to part of the value of the relevant property; or

(ii) part of the relevant property,

may recover from that officer an amount equal to the amount by which the value of the relevant property exceeds the sum of any amounts recovered as mentioned in subparagraph (i) and the amount of the value of any property recovered as mentioned in subparagraph (ii).

(6) Where —

(a) a liquidator recovers an amount of money from an officer of a company in respect of a disposition of property to a creditor as mentioned in subsection (5); and

(b) the liquidator subsequently recovers from that creditor an amount equal to the whole or part of the value of the property disposed of,

the officer may recover from the liquidator an amount equal to the amount so recovered or the value of the property so recovered.

Disclaimer of onerous property

556. (1) Subject to this section, where part of the property of a company consists of —

(a) land burdened with onerous covenants;

(b) shares in corporations;

(c) property that is unsaleable or is not readily saleable; or

(d) unprofitable contracts,

the liquidator of the company may, on behalf of the company, subject to subsection (2), notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised an act of ownership in relation to it, by writing signed by him, disclaim the property.

(2) The power of the liquidator under subsection (1) may only be exercised within the period 12 months after the commencement of the winding up or within such further period as the Court allows but, where the property did come to the knowledge of the liquidator within one month after the commencement of the winding up, the power may be exercised at any time within the period 12 months after the property came to his knowledge or within such further period as the Court allows.

(3) The disclaimer operates to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company and the property of the company in or in respect of the property disclaimed but does not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of some other person.

(4) The Court may, before or on granting leave to disclaim, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, as the Court thinks just and may make such other order in the matter as the Court thinks just.

(5) Where a disclaimer in respect of property is made, the liquidator shall, as soon as practicable, give notice of the disclaimer —

(a) to each person who, to the knowledge of the liquidator, has an interest in the property; and

(b) in the case of property the transfer or transmission of which may be registered under a law - to the person who has the function under that law of registering the transfer or transmission of that property.

(6) A liquidator may not disclaim a lease without the leave of the Court unless —

(a) he has given to the lessor and, if the company has sub-let the whole or part of the leased property or has charged the lease, to each sub-lessee or chargee 28 days' notice in writing of his intention to disclaim the lease; and

(b) no person to whom the liquidator has given such a notice has, within 28 days after it was given to him, required the liquidator, by notice in writing given to him, to apply to the Court for leave to disclaim the lease.

(7) The Court may, in relation to an application for leave to disclaim a lease under this section, make such orders with respect to fixtures, improvements and other matters arising out of the lease, as are just.

(8) Where —

(a) an application in writing has been made to the liquidator by a person interested in property requiring him to decide whether he will disclaim the property; and

(b) the liquidator has, during a period of 28 days after the receipt of the application, or during such extended period as the Court allows, declined or neglected to disclaim the property,

the liquidator is not entitled to disclaim the property and, in the case of a contract, he shall be deemed to have adopted it.

(9) The Court may, on the application of a person who is, as against the company, entitled to the benefit or subject to the burden of a contract made with the company, make an order —

(a) discharging the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as are just; or

(b) rescinding the contract on such terms as to restitution by or to either party;, or otherwise, as are just.

(10) Amounts payable pursuant to an order under subsection (9) may be proved as a debt in the winding up.

(11) The Court may, on application by a person either claiming an interest in, or being under a liability not discharged by this Act in respect of, disclaimed property, and after hearing such persons as it thinks just, make an order for the vesting of the property in, or delivery of the property to, a person entitled to it or a person in whom, or to whom, it seems to the Court to be just that it should be vested or delivered, or in or to a trustee for that person.

(12) A person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of any loss he has suffered by reason of the disclaimer and may prove the loss as a debt in the winding up.

(13) For the purpose of determining whether property of a company is of a kind to which subsection (1) applies, the liquidator may, by notice in writing given to a person claiming to have an interest in the property, require the person to furnish to the liquidator, within such period, not being less than 14 days, as is specified in the notice, a statement in writing of the interest claimed by him and the person shall comply with the requirement.

Executions, attachments, etc, before winding up

557. **(1)** Where —

(a) a creditor has issued execution against property of a company, or instituted proceedings to attach a debt due to a company or to enforce a charge or a charging order against property of a company, within 6 months immediately before the commencement of the winding up; and

(b) the company commences to be wound up,

the creditor shall pay to the liquidator an amount equal to any amount received by the creditor as a result of the execution, attachment or enforcement of the charge or the charging order, less an amount in respect of the costs of the execution, attachment or enforcement of the charge or the charging order, being an amount agreed between the creditor and the liquidator or, if no agreement is reached, an amount equal to the taxed costs of the execution, attachment or enforcement.

(2) Where the creditor has paid to the liquidator an amount in accordance with subsection (1), he may prove in the winding up for his debt as an unsecured creditor as if the execution or attachment or the enforcement of the charge or the charging order, as the case may be, had not taken place.

(3) Where a creditor of a company receives —

(a) notice in writing of an application to the Court for the winding up of the company; or

(b) notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily,

it is not competent for the creditor to take action, or further action, to attach a debt due to the company or to enforce a charge or a charging order against property of the company.

(4) Subsection (3) does not affect the right of a creditor to take action or further action if —

(a) in a case to which paragraph (3)(a) applies - the application has been withdrawn or dismissed; or

(b) in a case to which paragraph (3)(b) applies - the meeting of the company has refused to pass the resolution.

(5) Subsection (3) does not prevent a creditor from performing a binding contract for the sale of property entered into before he received a notice referred to in that subsection.

(6) Notwithstanding anything contained in this Subdivision, a person who purchases property in good faith —

(a) under a sale in consequence of the issue of execution against property of a company that, after the sale, commences to be wound up; or

(b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a company that, after the sale, commences to be wound up,

acquires a good title to it as against the liquidator or the company.

(7) In this section, "charging order" means a charging order made by a court in respect of a judgment.

Duties after receiving notice of application

558. (1) Subject to this section, where a person charged with executing a process of execution —

(a) receives notice in writing of an application to the Court for the winding up of a company; or

(b) receives notice in writing of the convening of a meeting of a company to consider a resolution that the company be wound up voluntarily,

it is not competent for the person to —

(c) take action to sell property of the company pursuant to a process of execution issued by or on behalf of a creditor; or

(d) pay to the creditor by whom or on whose behalf the process of execution was issued or to a person on his behalf the proceeds of the sale of property of the company that has been sold pursuant to such a process or any moneys seized, or paid to avoid seizure or sale of property of the company, under such a process.

(2) Subsection (1) does not affect the power of the person to take action or make a payment if —

(a) in a case to which paragraph (1)(a) applies - the application has been withdrawn or dismissed; or

(b) in a case to which paragraph (1)(b) applies - the meeting of the company has refused to pass the resolution.

(3) Subject to this section, where the officer of a court to which proceeds of the sale of property of a company or other moneys have been paid by pursuant to a process of execution issued by or on behalf of a creditor of the company —

(a) receives notice in writing of an application to the Court for the winding up of the company; or

(b) receives notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily,

any of those proceeds or moneys not paid out of court shall not be paid to or on behalf of the creditor.

(4) If —

(a) in a case to which paragraph (3)(a) applies - the application has been withdrawn or dismissed; or

(b) in a case to which paragraph (3)(b) applies - the meeting of the company has refused to pass the resolution,

subsection (3) does not prevent the making of a payment.

(5) Where a company is being wound up, the liquidator may serve notice in writing of that fact on the person executing a process of execution against the company or on the registrar or other appropriate officer of a court.

(6) Upon such a notice being so served —

(a) the person executing the process shall deliver or pay to the liquidator —

(i) any property of the company in his possession under a process of execution issued by or on behalf of a creditor; and

(ii) any proceeds of the sale of property of the company or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the commencement of the winding up, pursuant to such a process or moneys seized, or paid to avoid seizure or sale of property of the company, whether before or after the commencement of the winding up, under such a process; or

(b) the registrar or other officer of the court shall pay to the liquidator any proceeds of the sale of property of the company or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the commencement of the winding up, by a person pursuant to a process of execution issued by or on behalf of a creditor,

as the case requires.

(7) Where —

(a) property is, or proceeds of the sale of property or other moneys are, required by subsection (6) to be delivered or paid to a liquidator; or

(b) a person has, pursuant to subsection (1), refrained from taking action to sell property of a company, being land, and that company is being wound up under an order made on the application referred to in that subsection,

the costs of the execution are a first charge on that property or on those proceeds of sale or other moneys.

(8) For the purpose of giving effect to the charge referred to in subsection (7), the person, registrar or other officer may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that subsection as he thinks necessary for the purpose.

(9) If in a particular case it considers it is just to do so, the Court may —

(a) permit a person to take action to sell property or make a payment that the person could not, by reason of subsection (1), otherwise validly take; or

(b) permit the making of a payment the making of which would, by reason of subsection (3), otherwise be prohibited.

Subdivision E — Offences

Prosecution of delinquent officers and members

559. (1) Where a report is made under section 521, the Registrar may investigate the matter but, if it appears to the Registrar that the case is not one in which he ought to institute a prosecution, he shall inform the liquidator accordingly and thereupon the liquidator may himself institute a prosecution in relation to an offence referred to in the report.

(2) Where the Registrar decides to institute a prosecution, the Registrar may, by notice in writing given before or after the institution of the prosecution, require an officer of the company to which the matter reported to the Registrar relates (not being an officer who is, or, in the opinion of the Registrar, is likely to be, a defendant in the proceedings or is or has been a legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution as he is reasonably able to give.

(3) Where a person is required pursuant to subsection (2) to give assistance in connection with a prosecution or proposed prosecution, the person shall not —

(a) without reasonable excuse, refuse or fail to comply with the requirement; or

(b) in purported compliance with the requirement, furnish information or make a statement that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment or both.

(4) A person is not excused from furnishing information pursuant to a requirement made of him under subsection (2) on the ground that the information might tend to incriminate him but, where the person claims before furnishing information that the information might tend to incriminate him, the information is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(5) For the purposes of subsection (2), "officer", in relation to a company, means a person who is an officer of the company as defined by section 6 and includes —

(a) a person who has at any time been an officer of the company as so defined; and

(b) a person who acts, or has at any time acted, as banker, solicitor, auditor or in any other capacity for the company.

(6) The Registrar may direct that the whole or a part of costs and expenses properly incurred by the liquidator in proceedings brought by him under this section shall be defrayed by the Administration.

(7) Subject to any direction given under subsection (6) and to any charges on the property of the company and any debts to which priority is given by this Act, all such costs and expenses are payable out of that property as part of the costs of winding up.

Subdivision F — Dissolution

Power of Court to declare dissolution of company void

560. (1) Where a company has been dissolved pursuant to this Act, the Court may at any time within 15 years after the dissolution, on application of the liquidator of the company or of some other person who appears to the Court to be interested, make an order declaring the dissolution to have been void.

(2) The Court may, by the order, give such directions and make such provisions (including directions and provisions relating to the re-transmission of property vested in the Administration under section 563) as are just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(3) The person on whose application the order was made shall, within 14 days after the making of the order or within such further time as the Court allows, lodge with the Registrar an office copy of the order.

Power of Registrar to deregister defunct company

561. (1) Where the Registrar believes on reasonable grounds that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that, unless an answer to the contrary is received within one month after the date of the letter, a notice will be published in the Gazette stating that he proposes to consider cancelling the registration of the company.

(2) Unless the Registrar receives an answer within one month after the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the Gazette and send by post to the company a notice that, at the expiration of 3 months after the date of the notice, the registration of the company will, unless cause is shown to the contrary, be cancelled and the company will be dissolved.

(3) If the Registrar believes on reasonable grounds, that, in respect of a company that is being wound up —

(a) no liquidator is acting;

(b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging a return required to be made by him; or

(c) the affairs of the company have been fully wound up under Division 2 and there is no property or the property available is not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the Gazette and send by post to the company or the liquidator (if any) a notice to the same effect as that of the notice referred to in subsection (1).

(4) At the expiration of the time mentioned in a notice sent under subsection (1) or (3), the Registrar may, unless cause to the contrary is previously shown, by notice published in the Gazette, cancel the registration of the company and, on the publication of the notice in the Gazette, the company is dissolved.

(5) Where a company is so dissolved —

(a) any liability of an officer or member of the company continues and may be enforced as if the company had not been dissolved; and

(b) this subsection does not affect the power of the Court to wind up the company.

(6) If the Registrar is satisfied that the registration of a company was cancelled as the result of an error on his part, he may reinstate the registration of the company and thereupon the company shall be deemed to have continued in existence as if its registration had not been cancelled and the company had not been dissolved.

(7) If a person is aggrieved by the cancellation of the registration of a company, the Court may, on an application made by the person at any time within 15 years after the cancellation, if satisfied that the company was, at the time of the cancellation, carrying on business or in operation or that it is just that the registration of the company be reinstated, order the reinstatement of the registration of the company.

(8) Upon an office copy of the order being lodged with the Registrar, the company shall be deemed to have continued in existence as if its registration had not been cancelled.

(9) The Court may by an order made under subsection (7) give such directions and make such provisions (including directions and provisions relating to the re-transfer of property vested in the Administration under section 563) as are just for placing the company and all other persons in the same position as nearly as may be as if the registration of the company had not been cancelled.

(10) Where the registration of a company is reinstated under this section, the Registrar shall cause notice of that fact to be published in the Gazette but the failure of the Registrar to do so does not affect the validity of the reinstatement.

(11) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company.

(12) If there is no officer of the company whose name and address are known to the Registrar, the notice may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

Registrar to act as representative of defunct company in certain events

562. (1) Where, after a company has been dissolved (whether before or after the commencement of this Act), the Registrar is satisfied on reasonable grounds —

(a) that the company, if it still existed, 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 to that dealing, transaction or matter, some administrative act, not being of a discretionary kind, should have been done by or on behalf of the company, or should be done by or on behalf of the company if the company still existed,

the Registrar may do that act or cause that act to be done.

(2) The Registrar may execute or sign any relevant instrument or document and shall add a memorandum stating that he has executed or signed the document or memorandum pursuant to this section.

(3) Such an execution or signature has the same effect as if the company, if it still existed, had duly executed the instrument or document.

Outstanding property of defunct company to vest in Administration

563. (1) Where, after a company has been dissolved, there remains any outstanding property, whether within or outside Norfolk Island but not including unpaid capital, whether called or uncalled, which was vested in the company, to which the company was entitled, or over which the company had a disposing power, at the time when it was dissolved, but was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, the estate and interest in the property, at law or in equity, of the company or its liquidator at the time when the company was dissolved, together with all claims, rights and remedies that the company or its liquidator then had in respect of the property, vests by force of this section in the Administration.

(2) Where a claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or otherwise, the Administration may, for the purposes of this section, make, exercise or avail itself of that claim, right or remedy without that approval or concurrence.

(3) Where a company is dissolved, then, notwithstanding that the books of the company vest in the Administration pursuant to subsection (1), the person who was the last director of the company or the persons who were the last directors of the company before the company was dissolved shall retain the books of the company (other than any books of the company that a liquidator of the company is required to retain under subsection 529(2)) for a period of 3 years after the date on which the company was dissolved.

Disposal of outstanding interests in property

564. (1) Upon the Administration being satisfied on reasonable grounds that there is vested in it by force of section 563 an estate or interest in property, whether solely or together with some other person, of a beneficial nature and not merely held in trust, the Administration may get in, sell or otherwise dispose of, or deal with, that estate or interest or a part of that estate or interest as it sees fit.

(2) The power of the Administration under subsection (1) may be exercised either solely or together with some other person, by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as the Administration determines, and includes power to rescind a contract and resell or otherwise dispose of, or deal with, the property as the Administration determines, and power to make, execute, sign and give such contracts, instruments and documents as are necessary.

(3) The Administration may retain, in respect of the exercise of the powers conferred by subsections (1) and (2), out of the income derived from, or the proceeds of sale or other disposition of, the estate or interest concerned, the prescribed commission.

(4) The Administration shall apply moneys received by it in the exercise of a power conferred by this Subdivision in defraying the costs and expenses of and incidental to the exercise of that power and in making payments authorised by this Subdivision and shall retain any remainder of those moneys.

(5) A person making a claim in respect of money retained by the Administration under subsection (3) may apply to the Court for an order for payment of an amount to him and the Court shall, if satisfied that an amount should be paid to him, make an order for payment accordingly.

(6) Upon the making of an order under subsection (5) or, where the Minister is satisfied on reasonable grounds that an amount should be paid to a person out of money paid to the Administration under this section, the Minister shall cause payment of the amount to the person out of moneys lawfully available for the purpose.

(7) This section does do not deprive a person of any other right or remedy to which he is entitled against the liquidator or another person.

Liability of Administration as to property vested in Administration

565. (1) Property vested in the Administration pursuant to this Subdivision is liable and subject to all charges, claims and liabilities imposed on or affecting that property by reason of any law or otherwise to which the property would have been liable or subject if the property had continued in the possession, ownership or occupation of the company.

(2) Subsection (1) does not have effect to impose on the Administration a duty, obligation or liability to do or suffer an act or thing required, whether by law or otherwise, to be done or suffered by the owner or occupier of the property other than the satisfaction or payment of charges, claims or liabilities out of the property of the company so far as it is property available for and applicable to such a payment.

Accounts

566. The Administration shall —

(a) keep a record of property coming to its possession or under its control or, to its knowledge, vested in it by force of this Subdivision and of its dealings with it;

(b) keep accounts of moneys arising from those dealings and of their disposal; and

(c) keep for a period of 5 years all accounts, vouchers, receipts and papers relating to that property and those moneys.

Division 5 — Foreign Companies

Powers and functions in Norfolk Island of liquidators of foreign companies

567. The liquidator of a foreign company that is being wound up may, for the purposes of the winding up of affairs of the company in Norfolk Island, exercise a power or perform a function under this Part of a kind that may be exercised or performed under this Part by a liquidator of a company incorporated under this Act.

Division 6 — Winding Up of Bodies other than Companies

Application

568. (1) This Division applies to the following bodies:

(a) a foreign company that is, or is required to be, registered as a foreign company under Part 25; and

(b) a partnership, association or other body (whether corporate or unincorporate) that consists of more than 5 members.

(2) The provisions of this Division have effect in addition to, and not in derogation of, the provisions of sections 596, 597 and 598 or of any provisions contained in this Act or in some other law with respect to the winding up of bodies.

(3) The Court or liquidator may exercise powers or do an act with respect to a body to which this Division applies that might be exercised or done by it or him in the winding up of a company incorporated under this Act.

Winding up of bodies to which this Division applies

569. (1) Subject to this Division, a body to which this Division applies may be wound up under this Part, and this Part applies accordingly with such adaptations as are necessary, including the following adaptations:

(a) the principal place of business of the body in Norfolk Island shall, for all the purposes of the winding up, be deemed to be the registered office of the body;

(b) the body shall not be wound up voluntarily;

(c) the circumstances in which the body may be wound up are as follows:

(i) if the body has been dissolved, has ceased to have a place of business in Norfolk Island, has a place of business in Norfolk Island only for the purpose of winding up its affairs or has ceased to carry on business in Norfolk Island;

(ii) if the body is unable to pay its debts;

(iii) if the Court is satisfied that it is just that the body should be wound up; or

(iv) in the case of a foreign company, if the Registrar or an inspector has reported under Part 17 that he is of opinion that the company cannot pay its debts and should be wound up or that it is in the interests of the public, or of the shareholders or of the creditors of the company, that the company should be wound up.

(2) For the purposes of subparagraph (1)(c)(ii), a body is unable to pay its debts if —

(a) a creditor, by assignment or otherwise, to whom the body is indebted in a sum exceeding $1000 then due has served on the body, by leaving at its principal place of business in Norfolk Island or by delivering to the secretary or a director or executive officer of the body or by otherwise serving in such manner as the Court approves or directs, a demand, signed by or on behalf of the creditor, requiring the body to pay the sum so due and the body has, for 3 weeks after the service of the demand, failed to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) an action or other proceeding has been instituted against a member for a debt or demand due or claimed to be due from the body or from him in his capacity as a member and, notice in writing of the institution of the action or proceeding having been served on the body by leaving it at it principal place of business in Norfolk Island or by delivering it to the secretary or a director or executive officer of the body or by otherwise serving it in such manner as the Court approves or directs, the body has not, within 10 days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason of the action or proceeding;

(c) execution or other process issued on a judgment, decree or order obtained in a court in favour of a creditor against the body or a member of the body as such, or a person authorised to be sued as nominal defendant on behalf of the body, is returned unsatisfied; or

(d) the Court is otherwise satisfied that the body is unable to pay its debts.

(3) A body formed or incorporated outside Norfolk Island may be wound up under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a body corporate under the law of the place where it was formed or incorporated.

(4) For the purposes of this section, a body to which this Division applies shall be regarded as carrying on business in Norfolk Island in circumstances in which a foreign company would be regarded for the purposes of section 586 as carrying on business in Norfolk Island and shall not be regarded as carrying on business in Norfolk Island in circumstances in which a foreign company would not be regarded for the purposes of that section as carrying on business in Norfolk Island and the question whether a body to which this Division applies has ceased to carry on business shall be determined accordingly.

Contributories in winding up

570. (1) On a body to which this Division applies being wound up, a person —

(a) who is liable to pay or contribute to the payment of —

(i) a debt or liability of the body;

(ii) a sum for the adjustment of the rights of the members among themselves; or

(iii) costs and expenses of the winding up; or

(b) where the body has been dissolved in the place in which it was formed or incorporated - who immediately before the dissolution was so liable,

is a contributory and liable to contribute to the property of the body all sums due from him in respect of such a liability.

(2) On the death of a contributory, the provisions of this Act with respect to the personal representative of a deceased contributory apply.

Power of Court to stay or restrain proceedings

571. (1) The provisions of this Act with respect to staying and restraining actions and other civil proceedings against a company at a time after the filing of an application of winding up and before the making of a winding up order extend, in the case of a body to which this Division applies where the application to stay or restrain is by a creditor, to actions and other civil proceedings against a contributory of the body.

(2) Where an order has been made for winding up a body to which this Division applies, an action or other civil proceedings shall not be proceeded with or commenced against a contributory of the body in respect of a debt of the body except by leave of the Court and subject to such terms as the Court imposes.

Division 7 — Miscellaneous

Outstanding property of defunct body formed outside Norfolk Island

572. (1) This section applies to a body that is —

(a) a company formed or incorporated outside Norfolk Island; or

(b) a body referred to in paragraph 568(1)(b) formed or incorporated outside Norfolk Island.

(2) Where, after a body to which this section applies has been dissolved, there remains in Norfolk Island outstanding property, not including unpaid capital, whether called or uncalled, that was vested in the body, to which the body was entitled, or over which the body had a disposing power at the time when it was dissolved, but was not got in, realised upon or otherwise disposed of or dealt with by the body or its liquidator, the estate and interest in the property, at law or in equity, of the body or its liquidator at the time when the body was dissolved, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests by force of this section in the Administration.

(3) Where a claim, right or remedy of a liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or otherwise, the Administration may, for the purposes of this section, make, exercise or avail itself of the claim, right or remedy with that approval or concurrence.

(4) Section 564 applies in relation to property that vests in the Administration under this section in like manner as it applies in relation to an estate or interest in property referred to in section 564.

(5) Sections 565 and 566 apply in relation to property that vests in the Administration under this section in like manner as they apply in relation to property referred to in sections 565 and 566.

PART 23 — INVESTMENT COMPANIES

Interpretation

573. (1) In this Part, unless the contrary intention appears —

"investment company" means a corporation for the time being declared by order of the Registrar pursuant to subsection (3) to be an investment company;

"net tangible assets", in relation to a corporation, means tangible property at book values, less total liabilities at book values and less any aggregate amount by which the book values of the marketable securities held by the corporation exceed their market values;

"relevant provision" means any of the provisions of a section included in this Part.

(2) A reference in a relevant provision to an investment company is a reference to an investment company to which that provision applies.

(3) The Registrar may, by instrument in writing published in the Gazette, declare to be an investment company a corporation (being a company or a foreign company, that is, or is required to be, registered as a foreign company under this Act) that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

(4) The Registrar may, if he thinks fit, specify in the instrument the relevant provisions that are to apply to the company.

(5) If the Registrar so specifies relevant provisions, any relevant provisions that are not so specified do not apply to the corporation.

(6) If the Registrar does not specify relevant provisions that are to apply to the corporation, the whole of this Part applies to the corporation.

Restriction on borrowing by investment companies

574. (1) An investment company shall not borrow an amount if that amount, or the aggregate of that amount and amounts previously borrowed by it and not repaid, exceeds an amount equal to 50% of the amount of its net tangible assets.

(2) An investment company shall not borrow an amount, otherwise than by the issue of debentures, if that amount, or the aggregate of that amount and amounts previously borrowed by it otherwise than by the issue of debentures and not repaid, exceeds an amount equal to 25% of the amount of its net tangible assets.

(3) In subsection (2), "debentures" does not include a debenture that —

(a) is redeemable, except at the option of the borrower exercised not earlier than 3 years after the date of issue of the debenture, within less than 5 years after that date; or

(b) is issued to a bank as security for an overdraft.

Restriction on investments of investment companies

575. (1) An investment company shall not invest an amount in a corporation if that amount, or the aggregate of that amount and amounts previously invested by it in that corporation and still so invested, exceeds an amount equal to 10% of the amount of the net tangible assets of the investment company.

(2) An investment company shall not hold more than 5% of the subscribed ordinary share capital of a corporation.

Restriction on underwriting by investment companies

576. (1) An investment company shall not underwrite an issue of authorised securities to an amount that, when added to the amount or to the aggregate of the amounts to which it has previously underwritten a current issue or issues of other authorised securities (but not including an amount in respect of which the underwriting obligation has been discharged), exceeds an amount equal to 40% of the amount of its net tangible assets.

(2) An investment company shall not underwrite an issue of non-authorised securities to an amount that, when added to the amount or to the aggregate of the amounts to which it has previously underwritten a current issue or issues of other non-authorised securities (but not including an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equal to 20% of the amount of its net tangible assets.

(3) Where —

(a) an investment company has underwritten an issue of securities and, in relation to the underwriting, has not contravened subsection (1) or (2); and

(b) the company, as a result of the underwriting, invests in a corporation contrary to section 575,

the investment company shall be deemed not to have contravened a provision of that section by reason of having so invested if, at the expiration of 12 months after having so invested —

(c) the amount so invested does not exceed an amount equal to 10% of the amount of the net tangible assets of the investment company; and

(d) it does not hold more than 5% of the subscribed ordinary share capital of the corporation.

(4) This section extends to and in relation to sub-underwriting as if the sub-underwriting were underwriting.

(5) In this section —

"authorised securities" means securities in which, by any Act of the Commonwealth, State Act, law of a Territory (including Norfolk Island) or Act of New Zealand, trustees are authorised to invest trust funds in their hands;

"non-authorised securities" means securities other than authorised securities.

Special requirements as to articles and prospectus

577. (1) An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless —

(a) where the memorandum of the company contains a provision stating the objects of the company - the prospectus —

(i) specifies the kind of security in which, in accordance with the objects of the company, the company may invest; and

(ii) states whether it is among the objects of the company to invest in Norfolk Island or outside Norfolk Island or both; or

(b) where the memorandum of the company does not contain a provision stating the objects of the company - the prospectus states that the memorandum does not contain such a provision.

(2) After the expiration of 3 months after an investment company has been declared to be an investment company, the investment company shall not borrow or invest moneys, or underwrite or sub-underwrite an issue of securities, unless the articles of the company specify the matters referred to in paragraphs (1)(a) or (1)(b), as the case may be.

Investment company not to hold shares in other investment companies

578. (1) An investment company shall not purchase, or (after the expiration of 3 years after it is declared to be an investment company) hold shares in or debentures of —

(a) some other investment company; or

(b) a corporation incorporated in a State or Territory (including Norfolk Island) or in New Zealand that is for the time being declared by the Registrar pursuant to subsection (2) to be a corporation to which this paragraph applies.

(2) The Registrar may, by instrument published in the Gazette, declare a corporation that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control to be a corporation to which paragraph (1)(b) applies.

Investment company not to speculate in commodities

579. (1) An investment company shall not, for the purpose of profit, buy or sell, or deal in, raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in the materials or goods.

(2) Subsection (1) does not apply to or in relation to —

(a) a buying, selling or dealing pursuant to a contract entered into by the company before it was declared to be an investment company; or

(b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company —

(i) before it was so declared; or

(ii) pursuant to a contract entered into before it was so declared.

Balance-sheets and accounts

580. (1) A corporation, being an investment company, shall state under separate headings in each balance-sheet of the corporation, in addition to the other matters required to be stated in the balance-sheet —

(a) the investments of the corporation in securities other than relevant securities; and

(b) the manner in which the investments of the corporation have been valued.

(2) In subsection (1), "relevant securities" means —

(a) government, municipal and other public debentures, stocks and bonds;

(b) shares in a corporation;

(c) options in respect of shares in a corporation; and

(d) debentures of a corporation.

(3) A corporation, being an investment company, shall attach to each balance-sheet —

(a) a list of all purchases and sales of securities by the corporation during the period to which the accounts relate together with a statement of the total amount of brokerage paid by the corporation during that period and the proportion of that brokerage paid to a stock or share broker, or to an employee or nominee of broker such a broker, who is an officer of the corporation; and

(b) a list of all the investments of the corporation as at the date of the balance-sheet, showing the descriptions and quantities of those investments.

(4) A corporation, being an investment company, shall show separately in the profit and loss account, in addition to any other matters required to be shown, income from underwriting (including sub-underwriting).

Investment fluctuation reserve

581. (1) The net profits and losses of a corporation, being an investment company, from the purchase or sale of securities shall be credited or debited, respectively, by the corporation to a reserve account to be kept by it and to be called the "Investment Fluctuation Reserve".

(2) The moneys standing to the credit of an investment fluctuation reserve shall not be applied for the payment of dividends.

(3) An investment fluctuation reserve may be applied for the payment of any tax in respect of profits made on the sale or other disposal of securities.

Offences

582. (1) If default is made by a corporation in complying with the provisions of this Part, the corporation and any officer of the corporation who is in default are each guilty of an offence.

(2) A transaction is not invalid by reason only of such a default.

PART 24 — CORPORATIONS ACTING AS TRUSTEE

Notification that corporation is acting as trustee

583. (1) In each business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit issued or signed by or on behalf of a corporation, or purporting to be issued or signed by or on behalf of a corporation, in its capacity as trustee of a trust, there shall be set out —

(a) a statement to the effect that the instrument or document has been issued or signed by or on behalf of the corporation in its capacity as trustee of a trust; and

(b) if the trust has a name, the name of the trust.

(2) If default is made in complying with subsection (1), the corporation and any officer of the corporation who is in default are each guilty of an offence.

No constructive notice of terms of trust

584. A person shall not be taken for any purpose to have notice of the terms of a trust of which a corporation is a trustee by reason only that the person is aware that the corporation is a trustee of the trust if the person became so aware by reason of the inclusion in an instrument or document of a statement of the kind required by section 583.

Liability of directors for debts

585. Where —

(a) a company that is a trustee of a trust, acting or purporting to act in its capacity as trustee, incurs a debt; and

(b) the company is for some reason not entitled to be indemnified out of the assets of the trust in respect of the debt,

the persons who were the directors of the company at the time when the debt was incurred are jointly and severally liable with the company for the payment of the debt.

PART 25 — FOREIGN COMPANIES

Interpretation

586. (1) In this Part, "agent", in relation to a foreign company, means a person named in a memorandum of appointment or power of attorney lodged in relation to the company under paragraph 588(2)(e) or subsection 590(5).

(2) A reference in this Part to a foreign company carrying on business in Norfolk Island includes a reference to a foreign company establishing or using a share transfer office or share registration office in Norfolk Island or administering, managing or otherwise dealing with property situated in Norfolk Island as an agent, legal personal representative or trustee, whether by its servant or agent or otherwise.

(3) Notwithstanding subsection (2), a foreign company shall not be regarded as carrying on business in Norfolk Island for the reason only that, in Norfolk Island, it —

(a) is or becomes a party to an action or suit or an administrative or arbitration proceeding or effects settlement of an action, suit or other proceeding or of a claim or dispute;

(b) holds meetings of its directors or shareholders or carries on other activities concerning its administration;

(c) maintains a bank account;

(d) effects a sale through an independent contractor;

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Norfolk Island;

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

(g) secures or collects any of its debts or enforces any of its rights with respect to securities relating to any of its debts;

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

(i) invests its funds or holds property.

Power to hold land

587. A foreign company registered under this Part has power to hold land in Norfolk Island.

Unregistered foreign company not to establish place of business or carry on business in Norfolk Island

588. (1) A foreign company shall not establish a place of business, or commence to carry on business, in Norfolk Island unless it is registered under this Part.

(2) If a foreign company lodges with the Registrar for registration under this Part —

(a) a certified copy of the certificate of its incorporation or registration in its place of formation or incorporation or a document of similar effect;

(b) a certified copy of its constituent documents;

(c) a list of its directors by whatever name called containing particulars with respect to those directors that are equivalent to the particulars that are required by this Act to be contained in the register of the directors, principal executive officers and secretaries of a company incorporated under this Act;

(d) where the list referred to in paragraph (c) includes directors who are resident in Norfolk Island and members of a local board of directors - a memorandum duly executed by or on behalf of the company stating the powers of those local directors;

(e) a memorandum of appointment or power of attorney under the seal of the company or executed on its behalf in such manner as to be binding on the company, stating the name and address, or names and addresses, of one or more persons resident in Norfolk Island, not including a foreign company, authorised to accept on its behalf service of process and notices required to be served on the company;

(f) in relation to each existing charge on property of the company that would be a registrable charge within the meaning of Part XI if the company were a registered foreign company, the documents required to be lodged by subsection 253(3);

(g) notice of the address of its registered office, or if there is no registered office, of its principal place of business in the place of its formation or incorporation;

(h) notice of the address of its registered office in Norfolk Island; and

(i) a statement in writing containing the prescribed particulars made by an agent of the company,

the Registrar shall register the company under this Part by entering the name of the company in a register to be kept by the Registrar for the purposes of this Part.

Registered office of registered foreign company

589. (1) A registered foreign company shall have a registered office in Norfolk Island to which all communications and notices may be addressed.

(2) The office shall be open and accessible to the public —

(a) where a notice has been lodged by the foreign company with the Registrar under subsection (4) - for such hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted) as are specified in whichever is the later of that notice or a notice lodged by the foreign company with the Registrar under subsection 591(3); or

(b) in any other case - for not less than 5 hours between 10 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted).

(3) The company shall have a representative of the company present at all times when the office is open to the public.

(4) A registered foreign company may lodge with the Registrar notice in writing of the hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and public holidays excepted) during which the registered office of the foreign company in Norfolk Island is open and accessible to the public.

(5) In this section, a reference to 5 p.m. is, in respect of a Wednesday, a reference to 1 p.m.

Agents

590. (1) Where a memorandum of appointment or power of attorney lodged with the Registrar pursuant to paragraph 588(2)(e) is executed by a person on behalf of the foreign company concerned, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by a statement in writing to be a true statement, shall be lodged with the Registrar.

(2) The copy so lodged shall for all purposes be regarded as an original.

(3) An agent of a registered foreign company, until he ceases to be an agent of the company in accordance with subsection (5) —

(a) continues to be the agent of the company;

(b) is answerable for the doing of all acts, matters and things that are required to be done by the company under this Act; and

(c) is personally liable to all penalties imposed on the company in respect of an offence against this Act unless he satisfies the court hearing the matter that he should not be so liable.

(4) A registered foreign company or its agent may lodge with the Registrar a notice stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(5) The agent ceases to be an agent on the expiration of a period of 21 days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (6), whichever is the earlier, but, if the notice states a date on which he is to so cease and the date is the expiration of that period, on that date.

(6) Where —

(a) an agent of a registered foreign company ceases to be the agent and the company is then without an agent in Norfolk Island; and

(b) the company is carrying on business or has a place of business in Norfolk Island,

the company shall, within 21 days after the agent ceases to be its agent, appoint an agent and lodge a memorandum of his appointment in accordance with paragraph 588(2)(e) and a statement in writing in accordance with paragraph 588(2)(i) and, if not already lodged pursuant to subsection (1) of this section, a copy of the deed, document or power of attorney referred to in that subsection verified in accordance with that subsection.

(7) On the registration of a foreign company under this Part or the lodging with the Registrar of particulars of a change or alteration in a matter referred to in paragraph 591(2)(e), the Registrar shall issue, under his seal, a certificate of the registration of the company.

(8) A certificate so issued is evidence of the particulars specified in the certificate.

Notice to be filed where documents, etc, altered

591. (1) Notice of a change or alteration in the situation of the registered office of a registered foreign company in Norfolk Island shall be lodged by the company with the Registrar not later than 7 days after the day on which the change occurred.

(2) Where a change or alteration is made in —

(a) a constituent document of a registered foreign company or in some other instrument lodged with the Registrar in relation to such a company;

(b) the directors of a registered foreign company;

(c) the agent or agents of a registered foreign company or the name or address of an agent;

(d) the situation of the registered office or, if there is no registered office, of the principal place of business of a registered foreign company in its place of formation or incorporation;

(e) the name of a registered foreign company; or

(f) the powers of directors resident in Norfolk Island who are members of a local board of directors of the foreign company,

the company shall, within one month, or within such further period as the Registrar in special circumstances allows, after the change or alteration, lodge with the Registrar notice in writing giving particulars of the change or alteration and such documents as the regulations require.

(3) Where a notice has been lodged by a company under subsection 589(2), notice of a change of the hours during which the registered office of the company in Norfolk Island is open and accessible to the public shall be lodged by the company with the Registrar not later than 7 days after the day on which the change occurs.

Balance-sheets and other documents

592. (1) Subject to this section, a registered foreign company shall, at least once in each calendar year and at intervals of not more than 15 months, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year, and a copy of its profit and loss account for its last financial year, in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to that company in the place of its incorporation or formation, together with a statement in writing verifying that the copies are true copies.

(2) The Registrar may, whether before or after the expiration of the period referred to in subsection (1), extend the period.

(3) The Registrar may, if he believes on reasonable grounds that the balance-sheet, the profit and loss account and the other documents referred to in subsection (1) do not sufficiently disclose the company's financial position —

(a) require the company to lodge a balance-sheet;

(b) require the company to lodge an audited balance-sheet;

(c) require the company to lodge a profit and loss account; or

(d) require the company to lodge an audited profit and loss account,

within such period, in such form, containing such particulars and including such documents as the Registrar by notice in writing to the company requires.

(4) The company shall comply with the requirements set out in the notice.

(5) Subsection (3) does not authorise the Registrar to require a balance-sheet or a profit and loss account to contain particulars or include documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(6) Where a registered foreign company is not required by the law of the place of its formation or incorporation to prepare a balance-sheet, the company shall prepare and lodge with the Registrar a balance-sheet, or, if the Registrar so requires, an audited balance-sheet, within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Act.

(7) A foreign company that —

(a) is required under this section to lodge with the Registrar a profit and loss account or a copy of a profit and loss account; and

(b) is a prescribed foreign company in relation to the period (in this subsection referred to as "the relevant period") to which the profit and loss account relates,

shall lodge with the profit and loss account a report relating to the relevant period —

(c) stating the amount that would, if —

(i) all operations within Norfolk Island of the company had been conducted by a subsidiary of the company incorporated in Norfolk Island;

(ii) that subsidiary had conducted no other operations; and

(iii) the relevant period had been the last financial year of the subsidiary and the directors of the subsidiary had, in accordance with section 340, caused to be made out a profit and loss account for that last financial year,

have been the amount set out in the last-mentioned profit and loss account as the profit or loss of the subsidiary for that last financial year resulting from operations of the subsidiary;

(d) giving the prescribed particulars in relation to the amount first referred to in paragraph (c) or in relation to the manner in which that amount was ascertained;

(e) containing a review of the operations, in Norfolk Island, of the company during the relevant period and of the results of those operations;

(f) giving particulars of any significant change in the state of affairs of the company that occurred during the relevant period;

(g) giving particulars of any matter or circumstance that has arisen since the end of the relevant period and has significantly affected or may significantly affect —

(i) the operations, in Norfolk Island, of the company;

(ii) the results of those operations; or

(iii) the state of affairs of the company,

since the end of the relevant period or in the future;

(h) referring to —

(i) likely developments in the operations, in Norfolk Island, of the company; and

(ii) the expected results of those operations,

in the future; and

(i) in the case of a company that is a subsidiary of another corporation - setting out the name of the corporation that the company believes to be its ultimate holding company and, if known to the company, the place in which that ultimate holding company is incorporated.

(8) Where, in the opinion of the agent of a foreign company, it would prejudice the interests of the company if particular information, being some or all of the information required by paragraph (7)(h) to be included in a report, were so included —

(a) the first-mentioned information need not be included in the report; and

(b) if the first-mentioned information is not included in the report - the report shall state that some or all, as the case may be, of the information required by that paragraph to be so included has not been so included.

(9) The Registrar may, on application by a foreign company, declare, by instrument in writing, that it is satisfied that the documents lodged with the Registrar pursuant to the preceding subsections of this section (other than subsection (7)) by the company in respect of a specified period contain, in relation to the operations, in Norfolk Island, of the company, all the information that the company would be required to include in a report prepared pursuant to subsection (8) in respect of that period and, where the Registrar so declares, the company is not required to comply with subsection (8) in relation to that period.

(10) In subsections (7), (8) and (9) and in this subsection, "prescribed foreign company", in relation to a period, means a registered foreign company that conducted operations outside Norfolk Island at some time during that period.

(11) Except as provided by subsections (12) and (13), this section does not apply to or in relation to a company —

(a) that is an unlimited private company under the law of the United Kingdom relating to companies and is exempt under that law from lodging accounts with the Registrar of Companies or other appropriate authority under that law;

(b) that is included in a class of companies that the Registrar has declared, by order published in the Gazette, to be a class of companies of a kind the same or substantially the same as exempt proprietary companies under this Act;

(c) that is included in a class of companies that the Registrar has declared, by order published in the Gazette, to be a class of companies of a kind the same or substantially the same as proprietary companies under this Act, where no beneficial interest in a share in the company is held, directly or indirectly, otherwise than by a natural person;

(d) that is a corporation that has, by the law of the place of its formation or incorporation, exemptions and privileges similar to those that are provided for in section 86 and is not required by that law to lodge its accounts with a public authority so that they are available for public inspection; or

(e) that is an association that —

(i) is formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or some other object useful to the community;

(ii) is by its constituent documents prohibited from the payment of dividends to its members; and

(iii) is not required by law to lodge accounts with a public authority so that they are available for public inspection.

(12) A registered foreign company that is a company referred to in paragraph (11)(a), (b) or (c) shall, at least once in each calendar year, lodge with the Registrar a return containing the prescribed particulars made up to the date of its annual general meeting.

(13) The return shall be lodged within a period of one month after the date to which it is made up or within such further period as the Registrar, in special circumstances, allows.

Publication of name, etc, of foreign company

593. (1) There shall appear in legible characters on each relevant document of a foreign company that is issued, signed or published in Norfolk Island —

(a) the name of the company and, except in the case of a banking corporation, the place where it was formed or incorporated; and

(b) in the case of a company other than a banking corporation, the liability of the members of which is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd") - notice of the fact that the liability of its members is limited.

(2) If default is made in complying with subsection (1), the company is guilty of an offence.

Penalty: 10 penalty units.

(3) There shall appear in legible characters on each relevant negotiable instrument of a foreign company that is issued or signed in Norfolk Island the name of the foreign company and, if default is made in complying with this subsection, the company is guilty of an offence.

Penalty: 10 penalty units.

(4) If an officer of a foreign company or some other person —

(a) on behalf of the foreign company, issues or publishes in Norfolk Island, or authorises the issue or publication in Norfolk Island, of a relevant document of the company that does not comply with the requirements of subsection (1); or

(b) signs or issues in Norfolk Island, or authorises to be signed or issued in Norfolk Island, on behalf of the company, a relevant negotiable instrument that does not comply with the requirements of subsection (3),

he is guilty of an offence.

Penalty: 10 penalty units.

(5) If an officer of a foreign company or some other person signs or issues in Norfolk Island, or authorises to be signed or issued in Norfolk Island, on behalf of the company, a relevant negotiable instrument that does not comply with the requirements of subsection (3), he is liable to the holder of the instrument for the amount due on it unless that amount is paid by the company.

(6) A foreign company (other than a banking corporation) shall paint or affix and keep painted or affixed on the outside of each office or place in Norfolk Island in which its business is carried on, in a conspicuous position and in letters easily legible —

(a) its name and the place where it was formed or incorporated;

(b) in the case of a foreign company the liability of the members of which is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd") - notice of the fact that the liability of its members is limited; and

(c) in the case of the office that is its registered office in Norfolk Island - the words "Registered Office".

(7) If default is made in complying with subsection (6), the company is guilty of an offence.

Penalty: 10 penalty units.

(8) In this section —

"relevant document", in relation to a foreign company, means a business letter, statement of account, invoice, receipt, order for goods, order for services, official notice or publication of, or purporting to be issued or signed by or on behalf of, the company;

"relevant negotiable instrument", in relation to a foreign company, means a bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or a letter of credit of, or purporting to be issued or signed by or on behalf of, the company.

Cessation of business, etc

594. (1) If a registered foreign company ceases to have a place of business, or to carry on business, in Norfolk Island it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact.

(2) If the Registrar receives notice from an agent of a registered foreign company that the company has been dissolved, the Registrar shall remove the name of the company from the register.

Registrar may question company as to carrying on business

595. (1) Where the Registrar believes on reasonable grounds that a registered foreign company does not have a place of business, and does not carry on business, in Norfolk Island, the Registrar may send to the company in the prescribed manner, a letter to that effect and stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the Gazette that he proposes to consider striking the name of the company off the register.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company has a place of business, or is carrying on business in Norfolk Island he may publish in the Gazette and send to the company in the prescribed manner a notice that, at the expiration of 3 months from the date of that notice, the name of the company will, unless cause is shown to the contrary, be struck off the register.

(3) At the expiration of the time mentioned in a notice so sent, the Registrar may, unless cause to the contrary has previously been shown, strike the name of the company off the register, and shall publish notice of the name having been so struck off the register in the Gazette.

(4) Subsection (3) does not affect the power of the Court to wind up a company the name of which has been struck off the register.

(5) If the Registrar is satisfied that the name of a company was struck off the register under subsection (3) as the result of an error on the part of the Registrar, he may restore the name of the company to the register and thereupon the name of the company shall be deemed not to have been struck off and the company shall be deemed not to have ceased to be registered as a foreign company.

(6) If a person is aggrieved by the name of a registered foreign company having been struck off the register under subsection (3), the Court may, on an application made by the person at any time within 15 years after the name of the company was so struck off, if satisfied that, at the time of the striking off, the company had a place of business or was carrying on business in Norfolk Island or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register.

(7) Upon an office copy of the order being lodged with the Registrar, the name of the company shall be deemed not to have been struck off and the Court may by the order give such directions and make such provisions as are just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(8) Where the name of a company is restored to the register under subsection (5) or (6), the Registrar shall cause notice of that fact to be published in the Gazette, but failure of the Registrar to do so does not affect the validity of the restoration of the name to the register.

Obligation to lodge documents

596. If a registered foreign company ceases to be registered under this Part, an obligation to lodge a document with the Registrar imposed on the company by this Act by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time of the company so ceasing, being an obligation not discharged by the company at or before that time, continues to apply to the company notwithstanding that the period specified by this Act for the lodging of the document has not expired at or before that time.

Winding up or dissolution

597. If a registered foreign company commences to be wound up or is dissolved in its place of formation or incorporation —

(a) each person who, immediately before the commencement of the winding up proceedings, was an agent of the company, shall, within one month after the commencement of the winding up or the 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 the appointment; and

(b) the Court shall, on application by the person who is the liquidator in the place of formation or incorporation of the company or by the Registrar, appoint a liquidator of the company.

Official management

598. If a registered foreign company incorporated under the law of a State or of a Territory other than Norfolk Island is placed under official management in its place of incorporation under the provisions of the law of that State or Territory that correspond with Part 21 or, if the period of official management has terminated, the company shall, within one month after the commencement or termination or within such further time as the Registrar in special circumstances allows, lodge with the Registrar notice of that fact.

Duties of liquidator appointed by Court

599. A liquidator of a registered foreign company who is appointed by the Court —

(a) shall, before a distribution of the company's property is made, by advertisement in the Gazette, invite all creditors to make their claims against the company within a reasonable time before the distribution;

(b) shall not, except under an order of the Court, pay out a creditor of the company to the exclusion of some other creditor of the company; and

(c) shall, unless the Court otherwise orders, recover and realise the property of the company in Norfolk Island and shall pay the net amount so recovered and realised to the liquidator of the company in the place where it was formed or incorporated.

Disposal of proceeds of liquidation

600. Where a registered foreign company has been wound up so far as its property in Norfolk Island is concerned and there is no liquidator in the place of its formation or incorporation, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered pursuant to section 599.

Restriction on use of certain names

601. (1) A foreign company shall not be registered under this Part unless the name of the foreign company is reserved under Division 2 of Part IV in respect of the company.

(2) A change in the name of a foreign company shall not be registered under subsection (3) unless the name to which the foreign company proposes to change its name is reserved under Division 2 of Part IV in respect of the company.

(3) If a registered foreign company lodges with the Registrar notice in writing giving particulars of a change in the name of the company, the Registrar shall, subject to subsections (1) and (2), alter the register kept by the Registrar for the purposes of this Part by substituting the new name of the company for the name by which the company was previously registered.

(4) A registered foreign company shall not use a name other than that under which it is registered under this Part or as allowed under some other law of Norfolk Island.

(5) If a registered foreign company contravenes or fails to comply with subsection (4), the company and any officer of the company and agent of the company who are in default, are each guilty of an offence.

Branch register of shares

602. (1) Subject to this section, a registered foreign company that has a share capital and has a member who is resident in Norfolk Island shall keep at its registered office in Norfolk Island or at some other place in Norfolk Island a branch register for the purpose of registering shares of members resident in Norfolk Island who apply to have the shares registered in that register.

(2) A company is not obliged to keep a branch register pursuant to subsection (1) until after the expiration of one month from the receipt by it of an application in writing by a member resident in Norfolk Island for registration in its branch register in Norfolk Island of the shares held by the member.

(3) This section does not apply to a company that by its constituent documents prohibits an invitation to the public to subscribe for, and an offer to the public to accept subscriptions for, shares in the company.

(4) A branch register kept pursuant to this section shall be kept in the same manner if the branch register were a register of a company incorporated under this Act.

(5) Transfers shall be effected on a branch register kept pursuant to this section in the same manner and at the same charges as on the register of members of the company kept in its place of formation or incorporation and transfers lodged at its registered office in Norfolk Island are binding on the company.

(6) The Court has the same powers in relation to rectification of a branch register kept pursuant to this section as it has in respect of the register of a company incorporated under this Act.

(7) Where a registered foreign company opens a branch register in Norfolk Island it shall, within 14 days after the opening of the register, lodge with the Register notice of that fact specifying the address where the register is kept.

Registration of shares in branch register

603. Subject to this Act, on application for that purpose made by a member of a registered foreign company, being a member who is resident in Norfolk Island, the company shall register in a branch register of the company kept in Norfolk Island the shares held by the member that are registered in some other register kept by the company.

Removal of shares from branch register

604. Subject to this Act, on application for that purpose made by a member of a registered foreign company holding shares registered in a branch register kept in Norfolk Island, the company shall remove the shares from the branch register and register them in such other register as is specified in the application.

Index of members and inspection and closing of branch registers

605. The provisions of section 320 relating to the keeping of an index of the names of members of a company apply, with such adaptations as are necessary, in relation to persons holding shares in a branch register kept in Norfolk Island and section 321 applies, with such adaptations as are necessary, to the inspection and closing of a branch register and of an index kept in relation to a branch register kept in Norfolk Island.

Branch register to be evidence

606. A branch register kept pursuant to this Part is evidence of matters that are by this Part required or authorised to be inserted in the register.

Certificate as to shareholding

607. A certificate under the seal of a foreign company specifying shares held by a member of that company and registered in the branch register kept pursuant to this Part is evidence of the title of the member to the shares and of the fact that the shares are registered in the branch register.

Offences

608. If default is made by a foreign company in complying with any provision of this Part, other than a provision in which a penalty is expressly mentioned, the company, and any officer or agent of the company who is in default, are each guilty of an offence.

PART 25A – ADMINISTRATION COMPANIES

Division 1 – Preliminary

Interpretation

608A. In this Part, unless the contrary intention appears —

Administration company means a company all of the shares in which are beneficially owned by the Administration.

auditing standard means —

(a) a standard in force under section 336 of the *Corporations Act 2001* of the Commonwealth; or

(b) a provision of such a standard as it so has effect.

Government Auditor means the person or firm appointed under section 51 of the *Norfolk Island Act 1979* to be the Norfolk Island Government Auditor.

subsidiary**,** in relation to an Administration company, means a corporation that is a subsidiary of the Administration company within the meaning of section 21.

Role of Government Auditor

608B. (1) The Government Auditor is, in relation to each Administration company, either —

(a) to be the auditor of the company under this Act; or

(b) if someone else is the company's auditor – to give a report on the company's financial statements (see subsection 608C(2)).

(2) The Government Auditor is to audit the financial statements of each subsidiary of an Administration company (there are exceptions to this – see subsection 608D(4)).

Note: If the Government Auditor is not the subsidiary's auditor, this means that the Government Auditor has to do an audit of the statements in addition to that done by the subsidiary's auditor.

Division 2 – Annual report and related obligations

Annual Report

608C. (1) At least 14 days before each annual general meeting, an Administration company must give to the Minister —

(a) a copy of the company's annual report that includes the company's annual general meeting documents (or, if there is no such annual report, a copy of the company's annual general meeting documents); and

(b) any additional report under subsection (2).

For this purpose, ***annual general meeting documents*** means the documents relating to a financial year that the company is required by this Act to lay before its annual general meeting.

Penalty — 50 penalty units.

(2) If the auditor's report required by this Act was prepared by an auditor other than the Government Auditor, subsection (1) also requires the company to give a report by the Government Auditor on the financial statements.

(3) In preparing a report for the purposes of subsection (2), the Government Auditor must do so in accordance with the auditing standards.

(4) As soon as practicable after receiving documents referred to in this section, the Minister must lay the documents before the Legislative Assembly.

(5) The Regulations may make provision dealing with how this section applies to an Administration company that is not required to hold an annual general meeting or in relation to which an auditor's report is not required to be prepared.

(6) Without limiting subsection (5), Regulations for the purposes of that subsection may provide that this section applies with specified modifications.

Audit of relevant subsidiary's financial statements

608D. (1) Subject to subsection (4), the directors of an Administration company must do whatever is necessary to ensure that a relevant subsidiary's financial statements are audited by the Government Auditor.

(2) The Government Auditor's report must be prepared in accordance with the auditing standards.

(3) The Government Auditor must give the report to the Minister, together with a copy of the relevant subsidiary's financial statements.

(4) A relevant subsidiary's financial statements do not have to be audited by the Government Auditor if —

(a) the subsidiary is incorporated or formed in a place outside Norfolk Island; and

(b) either —

(i) under the law applying to the subsidiary in that place, the Government Auditor cannot be appointed as auditor of the subsidiary; or

(ii) in the Government Auditor's opinion, it is impracticable or unreasonable for the Government Auditor to audit, or to be required to audit, the statements.

(5) In this section —

relevant subsidiary's financial statements, in relation to an Administration company, means financial statements of an entity for an annual accounting period of the entity, where the entity is a subsidiary of the company at the end of that accounting period.

Division 3 – Other reporting obligations

Interim reports

608E. (1) The Minister may, by notice in the Gazette, require particular Administration companies or companies included in a class of Administration companies to give the Minister either:

(a) an interim report for the first 6 months of a financial year; or

(b) an interim report for each of the following periods:

(i) the first 3 months of each financial year;

(ii) the first 6 months of each financial year;

(iii)the first 9 months of each financial year.

(2) An interim report must include —

(a) a report of the company's operations, prepared by the directors; and

(b) the company's financial statements, prepared by the directors; and

(c) a report prepared in relation to the company by the Government Auditor in accordance with the regulations.

(3) The directors must give the interim report to the Minister within 2 months after the end of the period to which the report relates.

(4) The Minister may grant an extension of time in special circumstances.

(5) The Minister must lay an interim report before the Legislative Assembly as soon as practicable after having received it.

Minister to be notified of significant events

608F. (1) If an Administration company, or any of its subsidiaries, proposes to do any of the following things, the directors of the company must immediately give the Minister written particulars of the proposal:

(a) form a company or participate in the formation of a company;

(b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;

(c) acquire or dispose of a significant shareholding in a company;

(d) acquire or dispose of a significant business;

(e) commence or cease a significant business activity;

(f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

(2) The Minister may give written guidelines to the directors that are to be used by the directors in deciding whether a proposal is covered by a paragraph in subsection (1).

(3) Such guidelines are a disallowable instrument for the purposes of section 41A of the *Interpretation Act 1979.*

Keeping Minister informed

608G. (1) The directors of an Administration company must:

(a) keep the Minister informed of the operations of the company and its subsidiaries; and

(b) give the Minister such reports, documents and information in relation to those operations as the Minister requires.

(2) The directors must comply with requirements under paragraphs (1)(a) and (b) within the time limits set by the Minister.

Corporate plan

608H. (1) The directors of an Administration company must prepare a corporate plan at least once a year and give it to the Minister.

(2) The plan must cover a period of at least 3 years.

(3) If the Administration company has subsidiaries, the plan must cover both the company and its subsidiaries. In particular, for each subsidiary the plan must include details of the matters in subsection (5), so far as they are applicable.

(4) The directors must keep the Minister informed about:

(a) significant changes to the plan; and

(b) matters that arise that might significantly affect the achievement of the objectives in the plan.

(5) The plan must include details of the following matters, so far as they are applicable —

(a) the objectives of the company;

(b) assumptions about the business environment in which the company operates;

(c) the business strategies of the company;

(d) the investment and financing programmes of the company, including strategies for managing financial risk;

(e) financial targets and projections for the company;

(f) the dividend policy of the company;

(g) non-financial performance measures for the company;

(h) community service obligations of the company and the strategies and policies the company is to follow to carry out those obligations;

(i) review of performance against previous corporate plans and targets;

(j) analysis of factors likely to affect the achievement of targets or create significant financial risk for the company or for the Administration;

(k) where applicable, price control and quality control strategies for goods and services supplied by the company under a monopoly;

(l) human resource strategies and industrial relations strategies.

(6) The plan must also cover any other matters required by the Minister (which may include further details about the matters in subsection (5)).

(7) The Minister may give written guidelines to the directors that are to be used by the directors in deciding which matters are covered by subsection (5). Such guidelines are a disallowable instrument for the purposes of section 41A of the *Interpretation Act 1979.*

Division 4 – Miscellaneous

Compliance with general policies of the government

608I. (1) The Minister may notify the directors of an Administration company in writing of general policies of the Administration that are to apply to the company. The Minister must consult the directors before notifying them of the policies. Such a notification is a disallowable instrument for the purposes of section 41A of the *Interpretation Act 1979.*

(2) The directors must ensure that the policies are carried out in relation to the company.

(3) The directors must also ensure that, as far as practicable, the policies are carried out in relation to the subsidiaries of the company.

(4) The Minister may, in writing, exempt the directors from subsection (2) or (3) in respect of specified activities. Such an exemption is a disallowable instrument for the purposes of section 41A of the *Interpretation Act 1979.*

Notices to Assembly

608J. (1) The Minister must lay before the Legislative Assembly a notice of the happening of any of the following events as soon as practicable after the event happens:

(a) the Administration forms, or participates in forming, a company;

(b) the Administration acquires (either by purchase or subscription) or disposes of shares in a company;

(c) the Administration becomes, or ceases to be, a member of a company;

(d) a variation occurs in the rights attaching to shares held by the Administration in a company, or a variation occurs in the Administration's rights as a member of a company.

(2) The notice must include the further particulars, if any, required by the Regulations.

Interaction with other provisions

608K. The provisions of this Part are additional to and not in derogation of the application of other provisions of this Act to companies that are Administration companies and subsidiaries of Administration companies.

PART 26 — MISCELLANEOUS

Service of documents on company

609. (1) A document may be served on a company by leaving it at, or by sending it by post to, the registered office of the company.

(2) For the purposes of subsection (1), the situation of the registered office of a company —

(a) in a case to which neither paragraph (b) nor paragraph (c) applies - shall be deemed to be the place notice of the address of which has been lodged with the Registrar under subsection 272(1);

(b) if only one notice of a change of address has been lodged with the Registrar under subsection 272(3), shall, from and including —

(i) the date that is 7 days after the date on which the notice was lodged; or

(ii) the date that is specified in the notice as the date from which the change of address is to take effect,

whichever is the later date, be deemed to be the place the address of which is specified in the notice; or

(c) if 2 or more notices of a change of address have been lodged with the Registrar under subsection 272(3), shall, from and including —

(i) the date is 7 days after the date on which the later or latest of those notices was lodged; or

(ii) the date that is specified in the later or latest of those notices as the date from which the change of address is to take effect,

whichever is the later date, be deemed to be the place the address of which is specified in the relevant notice.

(3) The situation of the registered office of a company shall be deemed to be the place as determined under subsection (2) irrespective of whether the address of a different place is shown as the address of the registered office of the company in a return or other document (not being a notice under section 272 or 589 lodged with the Registrar after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (2)(c), was lodged.

(4) For the purposes of subsection (1), the situation of the registered office of a company incorporated under the repealed laws shall, unless and until a notice is lodged with the Registrar in relation to that company under this Act, be deemed to be the place that was, immediately before the commencement of this Act, the situation of the registered office of the company for the purposes of the repealed laws.

(5) Without affecting the operation of subsection (1), a document may be served on a company by delivering a copy of the document personally to each of 2 directors of the company who reside in Norfolk Island.

(6) Where a liquidator or official manager of a company has been appointed, a document may be served on a company by leaving it at, or by sending it by post to, the last address of the office of the liquidator or official manager (respectively) notice of which has been lodged with the Registrar.

Service of documents on registered foreign company

610. (1) A document may be served on a registered foreign company —

(a) by leaving it at, or by sending it by post to, the registered office of the company in Norfolk Island; or

(b) by leaving it at, or by sending it by post to, the address of a person who is an agent of the company for the purposes of Part 25, being —

(i) in a case to which subparagraph (ii) does not apply - an address notice of which has been lodged with the Registrar under subsection 588(2) or 590(5); or

(ii) if a notice or notices of a change or alteration in that address has or have been lodged with the Registrar under section 591 - the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.

(2) For the purposes of subsection (1), the situation of the registered office of a registered foreign company —

(a) in a case to which neither paragraph (b) nor paragraph (c) applies - shall be deemed to be the place notice of the address of which has been lodged with the Registrar under paragraph 588(2)(h);

(b) if only one notice of a change of address has been lodged with the Registrar under subsection 591(1), shall, from and including —

(i) the date that is 7 days after the date on which the notice was lodged; or

(ii) the date that is specified in the notice as the date from which the change of address is to take effect,

whichever is the later date, be deemed to be the place the address of which is specified in the notice; or

(c) if 2 or more notices of a change of address have been lodged with the Registrar under subsection 591(1), shall, from and including —

(i) the date that is 7 days after the date on which the later or latest of those notices was lodged; or

(ii) the date that is specified in the later or latest of those notices as the date from which the change of address is to take effect,

whichever is the later date, be deemed to be the place the address of which is specified in the relevant notice.

(3) The situation of the registered office of a registered foreign company shall be deemed to be the place determined as mentioned in subsection (2) irrespective of whether the address of a different place is shown as the address of the registered office of the company in a return or other document (not being a notice under subsection 591(1)) lodged with the Registrar after the notice referred to in paragraph 2(a) or (b), or the later or latest of the notices referred to in paragraph (2)(c), was lodged.

(4) Without affecting the operation of subsection (1), if 2 or more directors of a registered foreign company reside in Norfolk Island, a document may be served on the company by delivering a copy of the document personally to each of 2 of them.

(5) Where a liquidator of a registered foreign company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged with the Registrar.

Other modes of service

611. This Part does not affect —

(a) the power of the Court to authorise a document to be served on a company in a manner not provided for by this Part; or

(b) the operation of an enactment or of the rules authorising a document to be served on a company in a manner not provided for by this Part.

Address of registered office, principal office, etc

612. Where a provision of this Act requires a notice to be lodged with the Registrar of —

(a) the address of an office, or of a proposed office, of a corporation or person; or

(b) a change in the situation of an office of a corporation or person,

the notice —

(c) shall specify the full address, or the full new address, as the case requires, of the relevant office including, where applicable, the number of the room and of the floor or level of the building on which the office is situated; and

(d) where the notice relates to the address or situation of an office of a corporation and the address specified in accordance with paragraph (a) is the address of premises that are not to be occupied by the corporation - shall be accompanied by the consent of the person who is the occupier of those premises to the specification of that address in that notice.

Vesting of property

613. (1) Where an order is made by a court under this Act vesting property in a person —

(a) subject to subsection (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment; and

(b) the person who applied for the order shall, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.

(2) Where —

(a) the property to which an order referred to in subsection (1) relates is property a transfer or transmission of which may be registered under a law of Norfolk Island, of the Commonwealth, of a State or of a Territory other than Norfolk Island; and

(b) the law enables the registration of the order,

the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

(3) Where —

(a) property vests in a person by force of this Act;

(b) the property is property the transfer or transmission of which may be registered under a law of Norfolk Island, of the Commonwealth, of a State or of a Territory other than Norfolk Island; and

(c) that law enables the person to be registered as the owner of that property,

that property, notwithstanding that it vests in equity in that person by force of this Act, does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

Parts of dollar to be disregarded in determining majority in value of creditors, etc

614. In determining for the purposes of this Act whether a majority in value of creditors, or a particular proportion in value of creditors, has passed a resolution or done some other act or thing, if a creditor's debt consists of a number of whole dollars and a part of a dollar, the part of the dollar shall be disregarded.

Rounding off

615. (1) A company may, subject to any prescribed conditions, exceptions or qualifications, insert in accounts or in a report under this Act, in substitution for an amount otherwise required or permitted, an amount ascertained as prescribed, not being an amount that is $500 greater or less than the first-mentioned amount.

(2) For the purposes of subsection (1), the insertion of zero shall be deemed to be the insertion of an amount.

Irregularities

616. (1) In this section, unless the contrary intention appears —

(a) a reference to a proceeding under this Act is a reference to any proceeding, whether a legal proceeding or not; and

(b) a reference to a procedural irregularity includes a reference to —

(i) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(ii) a defect, irregularity or deficiency of notice or of time.

(2) A proceeding under this Act is not invalidated by reason of a procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by an order of the Court and, by order, declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with this Act, or a proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by a person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting the generality of any other provision of this Act, the Court may, on application by an interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(a) an order declaring that an act, matter or thing purporting to have been done, or a proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of a contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of the corporation;

(b) an order directing the rectification of a register kept by the Registrar under this Act;

(c) an order relieving a person in whole or in part from civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);

(d) an order extending the period for doing an act, matter or thing or instituting or taking a proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned had expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding.

(5) Where the Court makes an order under subsection (4), it may make such consequential or ancillary orders as are just.

(6) An order may be made under paragraph (4)(a) or (c) notwithstanding that the contravention or failure concerned resulted in the commission of an offence.

(7) The Court shall not make an order under this section unless it is satisfied —

(a) in the case of an order referred to in paragraph (4)(a) —

(i) that the act, matter, thing, or proceeding, concerned is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii)that it is in the public interest that the order be made;

(b) in the case of an order referred to in paragraph (4)(c) - that the person subject to the civil liability concerned acted honestly; or

(c) in every case - that no substantial injustice has been or is likely to be caused to a person.

(8) A reference in this section to this Act includes a reference to the repealed laws.

Costs

617. (1) Where a corporation is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if the court is satisfied that the corporation will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

(2) The costs of a proceeding before a court under this Act shall be borne by such party to the proceeding as the court, in its discretion, orders.

Disposal of securities if whereabouts of holder unknown

618. (1) Where a person has been shown in an appropriate register of a company as the holder of a security of the company for a period of not less than 6 years and the company has, for a period of not less than 6 years —

(a) had reasonable grounds for believing that that person was not residing at the address shown in the register as his address; and

(b) on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Act, it sought to communicate with that person, been unable after the exercise of reasonable diligence so to do,

the company may cause an advertisement to be published in the Gazette and in a newspaper circulating in the place shown in that register in relation to the address of the person concerned stating that the company intends, after the expiration of one month from the date of the advertisement, to apply to the Registrar for permission to transfer to the Administration the securities held by the person and any rights in respect of the securities.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the person remain unknown, the company may apply to the Registrar for permission so to transfer the securities and rights.

(3) The application shall be accompanied by a statement in writing by a director, principal executive officer or secretary of the company and a copy of the advertisement referred to in subsection (1).

(4) Where the Registrar gives permission for securities and rights (or rights to be transferred) as provided by the preceding provisions of this section, the company may transfer the securities or rights accordingly and for that purpose may execute an appropriate transfer.

(5) The Administration —

(a) may deal with property so transferred or any securities or other property received by the Administration in substitution for the transferred securities or rights; and

(b) shall deal with the proceeds, and any income derived, as provided by this Act.

(6) The Administration or the Registrar is not liable to a person in respect of anything done, or in respect of the failure to do anything, in respect of property in relation to which this section applies.

(7) The Administration or the Registrar is not liable to pay a call, make a contribution, discharge a liability or do any other act or thing in respect of property in relation to which this section applies, whenever the obligation arose.

(8) Subsection (7) does not affect the right of a company to forfeit a share.

(9) A reference in this section to a period of not less than 6 years is a reference to a period that commenced before or after the commencement of this Act.

Power to grant relief

619. (1) If, in respect of a civil proceeding brought in a court against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which he is such a person, it appears to the court that the person is or may be liable in respect of the negligence, default or breach but that he has acted honestly 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 in whole or in part from his liability on such terms as are just.

(2) Where a person to whom this section applies has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of trust or breach of duty in a capacity by virtue of which he is such a person, he may apply to the Supreme Court for relief, and that court has the same power to relieve him as it would have had under subsection (1) in respect of a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought.

(3) This section applies to a person who is —

(a) an officer of a corporation;

(b) an auditor of a corporation, whether or not he is an officer of the corporation;

(c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise; or

(d) a receiver, manager, liquidator or other person appointed or directed by the Court to carry out a duty under this Act in relation to a corporation.

(4) For the purposes of this section, "officer", in relation to a corporation, means —

(a) a director, secretary, executive officer or employee of the corporation;

(b) a receiver or manager of property of the corporation;

(c) an official manager or deputy official manager of the corporation;

(d) a liquidator of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and some other person or other persons.

Directions with respect to meetings ordered by the Court

620. Where, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as are just.

Appeals from decisions of Registrar, receivers and liquidators

621. (1) A person aggrieved by an act, omission or decision of the Registrar, may, within such period (if any) as is prescribed, appeal to the Court.

(2) The Court may confirm, reverse or modify the act or decision or remedy the omission, as the case may be, and make such orders and give such directions in the matter as are just.

(3) Subsection (1) does not apply to an act or decision of the Registrar that is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of an act, matter or thing.

(4) A person aggrieved by an act, omission or decision of —

(a) a person administering a compromise, arrangement or scheme referred to in Part 18;

(b) a receiver, or a manager, of the property or of part of the property of a corporation;

(c) an official manager or a deputy official manager; or

(d) a liquidator or provisional liquidator of a company,

may, within such period (if any) as is prescribed, appeal to the Court in respect of the act, omission or decision.

(5) The Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as are just.

Power of Registrar to intervene in proceedings

622. (1) The Registrar may intervene in a legal proceeding relating to a matter arising under this Act or under the repealed laws.

(2) Where the Registrar intervenes as mentioned in subsection (1), the Registrar shall be deemed to be a party to the proceeding and to have all the rights, duties and liabilities of such a party.

Examination of persons concerned with corporations

623. (1) In this section, a reference, in relation to a corporation, to a prescribed person, is a reference to an official manager, liquidator or provisional liquidator of the corporation or to some other person authorised by the Registrar to make applications under this section or to make an application under this section in relation to the corporation.

(2) Where it appears to the Registrar or to a prescribed person that —

(a) a person who has taken part or been concerned in the promotion, formation, management, administration or winding up of, or has otherwise taken part or been concerned in affairs of, a corporation has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to the corporation; or

(b) a person is or may be capable of giving information in relation to the promotion, formation, management, administration or winding up of, or otherwise in relation to affairs of, a corporation,

the Registrar or the prescribed person may apply to the Court for an order under this section in relation to the person.

(3) The Court may order that the person attend before the Court on a day and at a time fixed by the Court to be examined on oath or affirmation on any matter relating to the promotion, formation, management, administration or winding up of, or otherwise relating to affairs of, the corporation concerned.

(4) An examination under this section shall be held in public except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

(5) The Court, on making an order for an examination, or at a later time, on the application of a person concerned, may give directions as to the matters to be inquired into, and, subject to subsection (4), as to the procedure to be followed (including, in the case of an examination in private, directions as to the persons who may be present).

(6) A person who is ordered under subsection (3) to attend before the Court shall not, without reasonable excuse —

(a) fail to attend as required by the order; or

(b) fail to attend from day to day until the conclusion of the examination.

Penalty: 100 penalty units or imprisonment or both.

(7) A person attending before the Court for examination pursuant to an order made under subsection (3) shall not refuse or fail to take an oath or make an affirmation.

Penalty: 100 penalty units or imprisonment or both.

(8) A person attending before the Court for examination pursuant to an order made under subsection (3) shall not refuse or fail to answer a question that he is directed by the Court to answer.

Penalty: 100 penalty units or imprisonment or both.

(9) A person attending before the Court for examination pursuant to an order made under subsection (3) shall, if directed by the Court to produce books in his possession or under his control relevant to the matters on which he is to be, or is being, examined, shall not refuse or fail to comply with the direction.

Penalty: 100 penalty units or imprisonment or both.

(10) Where the Court so directs a person to produce books and the person has a lien on the books, the production of the books does not affect the lien.

(11) A person attending before the Court for examination pursuant to an order made under subsection (3) shall not make a statement that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment or both.

(12) A person is not excused from answering a question put to him at an examination held pursuant to an order made under subsection (3) on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, the answer is not admissible in evidence against him in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(13) The Court may order the questions put to a person and the answers given him at an examination under this section to be recorded in writing and may require the person to sign the record.

(14) Subject to subsection (12), a record of an examination so signed by a person, or a transcript of an examination of a person that is authenticated as prescribed, may be used in evidence in a legal proceeding against the person.

(15) A person ordered to attend before the Court for examination under this section may, at his own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to him such questions as the Court allows for the purpose of enabling him to explain or qualify the answers or evidence given by him.

(16) The Court may, if it thinks fit, adjourn an examination under this section from time to time.

(17) Where the Court is satisfied that an order under subsection (3) was obtained without reasonable cause, the Court may order the whole or part of the costs incurred by the person ordered to be examined to be paid by the applicant or by some other person who, with the consent of the Court, took part in the examination.

Orders against persons concerned with corporations

624. (1) In this section, a reference to a prescribed person, in relation to a corporation, is a reference to an official manager, liquidator or provisional liquidator of the corporation or to some other person authorised by the Registrar to make applications under this section or to make an application under this section in relation to the corporation.

(2) Where, on application by the Registrar or by a prescribed person, the Court is satisfied that —

(a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a corporation; and

(b) the corporation has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty,

the Court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may do so notwithstanding that the person may have committed an offence in respect of the matter to which the order relates.

(3) The Court shall not make an order against a person under subsection (2) unless the Court has given the person the opportunity —

(a) to give evidence himself;

(b) to call witnesses to give evidence;

(c) to adduce other evidence in relation to the matters to which the application relates; and

(d) to employ, at his own expense, a solicitor, or a solicitor and counsel, to put to him, or to some other witness, such questions as the Court allows for the purpose of enabling him to explain or qualify the answers or evidence given by him.

(4) The orders that may be made under subsection (2) against a person include —

(a) an order directing the person to pay money or transfer property to the corporation; and

(b) an order directing the person to pay to the corporation the amount of the loss or damage.

(5) This section does not prevent a person from instituting other proceedings in relation to matters in respect of which an application may be made under this section.

Civil proceedings not to be stayed

625. A civil proceeding under this Act shall not be stayed by reason only that the proceeding discloses, or arises out of, the commission, or possible commission, of an offence.

Form and evidentiary value of books

626. (1) A book that is required by this Act to be kept or prepared may be kept or prepared —

(a) by making entries in a bound or looseleaf book;

(b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or

(c) in some other manner approved by the Registrar.

(2) Subsection (1) does not authorise a book to be so kept or prepared unless —

(a) the matters recorded or stored will be capable, at any time, of being reproduced in written form; or

(b) a reproduction of those matters is kept in a written form approved by the Registrar.

(3) A corporation shall take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, a book or part of a book required by this Act to be kept or prepared by the corporation.

(4) Where a corporation records or stores matters by means of a mechanical, electronic or other device, a duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or part of a book containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) Where —

(a) by this Act a book that is required by this Act to be kept or prepared is evidence, or conclusive evidence, of a matter; and

(b) the book is kept or prepared by recording or storing the matter by means of a mechanical, electronic or other device,

a writing that reproduces a matter so recorded or stored is evidence, or conclusive evidence, as the case may be, of the matter.

(6) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is established, be deemed to be a reproduction of the matter.

Inspection of books

627. (1) A book that is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where, in accordance with this Act, it is kept and at all times when the registered office in Norfolk Island of the corporation concerned is required to be open and accessible to the public.

(2) If a register kept by a corporation for the purposes of this Act is kept at a place other than the registered office in Norfolk Island of the corporation, that place shall be open to permit the register to be inspected during the same hours as those during which the registered office of the corporation is required to be open.

(3) A person permitted by this Act to inspect a book may make copies of, or take extracts from, the book and a person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book is guilty of an offence.

Location of books kept on computers, etc

628. (1) This section has effect where a corporation records otherwise than in written form a matter required to be contained in a book and means are provided by which the matter is made available for inspection in written form at a place (in this section referred to as "the place of inspection") other than the place (in this section referred to as "the place of storage") where the material constituting the record is kept.

(2) If the place of inspection in respect of a book is at a place where, apart from this section, the book would be required to be kept, the corporation shall be deemed to have complied with the requirements of this Act as to the location of the book.

(3) Subsection (2) applies only if the corporation —

(a) has lodged with the Registrar a notice stating that it desires to avail itself of this section in respect of a specified book and specifying the situation of the place of inspection and the place of storage in respect of that book; and

(b) where such a situation is changed, has within 14 days after the change lodged notice of the change with the Registrar.

Location of registers

629. (1) Subject to subsection (2), a register that is required by this Act to be kept by a company shall be kept at the registered office or at an office at the principal place of business in Norfolk Island of the company but —

(a) if the work of making up the register is done at some other office of the company in Norfolk Island, it may be kept at that other office;

(b) if the company arranges with some other person to make up the register on its behalf and the office of that other person at which the work is done is in Norfolk Island, it may be kept at that office; or

(c) if the Registrar approves, it may be kept at some other place in Norfolk Island.

(2) A branch register that is required by this Act to be kept in a particular State or Territory by a company shall be kept at an office of the principal office, or the principal place of business, in that State or Territory of the company but —

(a) if the work of making up the branch register is done at some other office of the company in that State or Territory, it may be kept at that other office;

(b) if the company arranges with some other person to make up the branch register on its behalf and the office of that other person at which the work is done is within that State or Territory, it may be kept at that office; or

(c) if the Registrar approves, it may be kept at some other place in Australia.

(3) If default is made in complying with subsection (1) or (2) in its application to a register or branch register of a company, the company, any officer of the company who is in default, and any person who has arranged with the company to make up the register or branch register on its behalf and is in default, are each guilty of an offence.

(4) A company shall, within 7 days after a register or branch register of the company to which subsection (1) or (2) applies is first kept at an office other than the registered office or the principal office, as the case may be, lodge with the Registrar notice of the address of the office where the register or branch register is kept and shall, within 7 days after a change in the place at which the register or branch register is kept, lodge with the Registrar notice of the change.

(5) If default is made in complying with subsection (4), the company and any officer of the company who is in default are each guilty of an offence.

(6) For the purposes of this section, a reference in subsection (1) to a register required to be kept by a company includes, if an index is required to be kept by this Act, a reference to the register and index.

(7) In this section, unless the contrary intention appears, "company" includes a registered foreign company.

Translations of documents

630. (1) Where by this Act a corporation is required to lodge with the Registrar a document or a certified copy of a document and the document is not written in the English language, the corporation shall lodge with the Registrar at the same time a certified translation of the document.

(2) Where by this Act a corporation is required to make a document available for inspection and the document is not written in the English language, the corporation shall keep at its registered office in Norfolk Island, or, if it does not have a registered office in Norfolk Island, at its principal office in Norfolk Island, a certified translation of the document into the English language.

(3) In this section, "document" includes a certificate or contract.

Certificate of incorporation conclusive evidence

631. A certificate of incorporation of a company given under this Act or under the repealed laws is conclusive evidence that all the requirements of this Act or of the repealed laws, respectively, with respect to registration and all matters precedent and incidental to registration have been complied with and that the company is duly incorporated under this Act or is a company within the meaning of this Act, as the case may be.

Admissibility of books in evidence

632. (1) A book kept by a corporation pursuant to a requirement of this Act or of the repealed laws is admissible in evidence in a proceeding and is evidence of a matter stated or recorded in the book.

(2) A document purporting to be a book kept by a corporation shall, unless the contrary is proved, be deemed to be such a book and to be kept pursuant to a requirement mentioned in subsection (1).

Admissibility of documents as evidence

633. (1) Where by this Act it is provided that a document is evidence of a matter, the provision means —

(a) that the document is admissible in evidence, subject to its relevancy;

(b) that the document, when so admitted, is evidence of the matter contained or recorded in the document; and

(c) that the evidence may be rebutted by other evidence.

(2) Subsection (1) does not apply to a document that is expressed to be conclusive evidence.

Court may compel inspection

634. If a person in contravention of this Act refuses to permit the inspection of a book or to supply a copy of a book, the Court may, by order, compel an immediate inspection of the book or order the copy to be supplied.

Non-application of rule against perpetuities to certain schemes

635. (1) The law relating to perpetuities does not apply, and shall be deemed never to have applied, to the trusts of a fund or scheme for the benefit of employees of a corporation, whether the fund or scheme was established before, or is established after, the commencement of this Act.

(2) In this section —

(a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, whether before or after the commencement of this Act and whether in pursuance of an enactment or law in force in Norfolk Island or in some other manner;

(b) a reference to a fund or scheme includes a reference to a provident, superannuation, sick, accident, assurance, unemployment, pension or co-operative benefit fund, scheme, arrangement or provision or other like fund, scheme, arrangement or provision; and

(c) a reference to an employee of a corporation includes a reference to —

(i) a director of the corporation; and

(ii) a wife, child, grandchild, parent or dependant of an employee or of a director of the corporation.

Fees

636. (1) There are payable to the Administration the prescribed fees in respect of —

(a) the lodgment and filing of documents with the Registrar;

(b) the registration of documents under this Act;

(c) the inspection or search of registers or documents in the custody of the Registrar;

(d) the production by the Registrar under a subpoena or like summons of such a register or document;

(e) the issuing of documents or copies of documents under this Act;

(f) the granting of licences, consents or approvals under this Act;

(g) the making of inquiries of, or applications to, the Registrar;

(h) the submission of documents for examination or consideration by the Registrar; and

(i) other matters or things dealt with by this Act.

(2) Where a prescribed fee is payable —

(a) for or in respect of the lodgment or filing of a document with the Registrar and the document is submitted without payment, or with insufficient payment, of the fee - the document shall be deemed not to have been lodged or filed until the fee, or the full fee, has been paid; or

(b) in respect of a matter that involves the doing of an act or thing by the Registrar - the Registrar shall not do that act or thing until the fee has been paid.

(3) The fees prescribed in respect of companies that are local companies for the purposes of section 638 may be less than the fees prescribed in respect of other companies.

(4) This section does not prevent the Registrar —

(a) from waiving or reducing, in a particular case, or in cases included in a particular class of cases, a fee that would otherwise be payable; or

(b) refunding, in whole or in part, in a particular case or in cases included in a particular class of cases, a fee that has been paid to him.

(5) This section authorises the expenditure from the Public Account of Norfolk Island of refunds of fees authorised by the Registrar.

(6) The Minister is not required to pay a prescribed fee.

Application of fees and other moneys

637. (1) All fees received by the Registrar under this Act shall be deemed to be public moneys for the purposes of the *Public Moneys Act 1979*.

(2) Moneys received by the Administration and moneys other than fees received by the Registrar under this Act shall be deemed to be trust moneys and form part of, and shall be dealt with through, the Trust Fund as defined by the *Public Moneys Act 1979*.

Local companies

638. (1) In this section, unless the contrary intention appears —

"annual return" has the same meaning as in Part 14;

"personal resident" means a natural person who ordinarily resides in Norfolk Island;

"qualifying person" means —

(a) a personal resident; or

(b) a resident holding company;

"resident holding company" means a company —

(a) that is carrying on business in Norfolk Island;

(b) the voting power of which is controlled by shareholders who are personal residents;

(c) the management of which is carried on by personal residents; and

(d) the residual assets of which would, if the company were wound up, vest beneficially in personal residents;

"residual assets", in relation to a company, means the assets of the company that would be available for distribution to the shareholders of the company if the company were wound up.

(2) Subject to subsection (3), a company may apply to the Registrar to be regarded as a local company in relation to the filing of a particular annual return.

(3) The application shall be made not later than a date 14 days (or before such later date as the Registrar allows) before the date on which the company is required to file that annual return.

(4) An application under subsection (2) shall be accompanied by a written statement in support of the application.

(5) The Registrar shall —

(a) consider the application; and

(b) before the date when the company is required to file the annual return —

(i) if he is satisfied that the company is a local company for the purpose of this section - determine that the company shall be regarded as a local company in relation to the filing of the return; or

(ii) if he is not so satisfied - refuse the application; and

(c) notify the company of his action.

(6) A company is a local company for the purpose of this section if —

(a) it is carrying on business in Norfolk Island;

(b) it has its principal management and control in Norfolk Island;

(c) the voting power of the company is controlled by shareholders who are qualifying persons;

(d) it is principally engaged in carrying on a prescribed trade, business or activity; and

(e) more than half of the residual assets of the company would, if the company were wound up, vest beneficially in qualifying persons.

False information

639. Where an application under section 638 contains or is accompanied by a statement that contains information that is false or misleading in a material particular, the company and each person who signed the application are each guilty of an offence.

Penalty: 5 penalty units.

PART 27 — OFFENCES

Time for institution of criminal proceedings

640. Notwithstanding anything in some other enactment, proceedings for an offence against this Act shall be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Minister, at a later time.

Restriction on offering shares, securities for subscription or purchase

641. (1) A person shall not, whether by appointment or otherwise, go from place to place offering securities for subscription or purchase to the public or by a member of the public.

(2) Subsection (1) does not apply with respect to securities of a corporation where the Registrar has, on the application of the corporation, exempted the corporation from the provision of that subsection by instrument in writing published in the Gazette.

(3) A person shall not make an offer in writing to a member of the public (not being a person whose ordinary business it is to purchase or sell securities, whether as principal or agent) of securities for purchase unless the offer is accompanied by —

(a) a statement in writing signed by the person making the offer and dated and containing such particulars as are required by this section to be included in the statement and otherwise complying with the requirements of this section; or

(b) in the case of securities of a corporation formed or incorporated outside Norfolk Island, by such a statement or by a prospectus that complies with the relevant requirements of this Act.

(4) Subsection (3) does not apply —

(a) where the securities to which the offer relates are securities included in a class that are listed for quotation on the stock market of a stock exchange in a State or Territory and the offer so states and specifies the stock exchange;

(b) where the securities to which the offer relates are shares that a corporation has allotted or agreed to allot with a view to their being offered for sale to the public and the offer is made by a document that complies with all relevant laws as to prospectuses;

(c) where the provisions of Part V or of Part IX apply in relation to the offer and have been complied with; or

(d) where the offer relates to debentures of a corporation of the kind referred to in section 130.

(5) The statement referred to in subsection (3) shall not contain matter other than the particulars required by this section to be included in the statement and shall not be in characters smaller or less legible than the characters used in the offer or in any document sent with the offer.

(6) The statement referred to in subsection (3) shall contain the following particulars:

(a) whether the person making the offer is acting as principal or agent and, if as agent —

(i) the name of his principal;

(ii) an address in Norfolk Island where that principal can be served with process; and

(iii) particulars as to the remuneration payable by the principal to the agent;

(b) the date on which and the place where the corporation was incorporated and the address of its registered or principal office in its place of incorporation and in Norfolk Island;

(c) a statement as to the authorised share capital of the corporation, its issued share capital, its paid-up share capital and the classes into which its share capital is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) a statement as to the dividends (if any) paid by the corporation in respect of each class of shares during each of the 5 financial years immediately preceding the offer and, if a dividend has not been paid in respect of shares of a particular class during any of those years, a statement to that effect;

(e) a statement as to the total amount of debentures issued by the corporation and outstanding at the date of the statement, together with the rate of interest payable on those debentures;

(f) the names and addresses of the directors;

(g) whether shares offered are fully paid up and, if not, to what extent they are paid up;

(h) whether shares offered are listed for quotation on the stock market of, or permission to deal in the shares on a stock market has been granted by, a stock exchange and, if so, the name of each such stock exchange;

(j) where the offer relates to units - the names and addresses of the persons in whom the shares represented by the units are vested, the date of, and the parties to, a document defining the terms on which those shares are held, and an address in Norfolk Island where that document or a copy of that document can be inspected; and

(k) the last audited balance-sheet of the corporation.

(7) In subsection (6), "corporation" means the corporation by which the securities to which the statement relates were or are to be issued.

(8) A person shall not, whether by appointment or otherwise, go from place to place making offers to the public or a member of the public, being offers of securities in a corporation that has not been formed for subscription or purchase.

(9) A person shall not make an offer to a member of the public, being an offer of securities in a corporation that has not been formed for subscription or purchase.

(10) A person who acts in contravention of this section is guilty of an offence.

Penalty: 25 penalty units or imprisonment or both.

(11) Where a person convicted of an offence under this section is a corporation, each officer concerned in the management of the corporation is guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(12) Where a person is convicted of having made an offer in contravention of this section, the court by or before which he was convicted may order that a contract made as a result of the offer is void and may give such consequential directions as it thinks proper for the repayment of money or the re-transfer of securities.

(13) A person aggrieved by an order made or direction given under subsection (12) by the Court of Petty Sessions may appeal to the Supreme Court against the order or direction, and the Supreme Court may confirm, reverse or modify the order or direction and make such further order or give such further directions as are just.

(14) In this section, "securities" includes units and a document (including a document referred to as a "bond") that confers or purports to confer on the holder of the document a claim against a corporation, whether the claim is present or future, certain or contingent, or ascertained or sounds only in damages.

(15) In this section, a reference to an offer or offering of securities for subscription or purchase includes an offer of securities by way of barter or exchange and a reference to an offer in writing of securities includes an offer by means of broadcasting, television or cinematograph, but, where an offer is made by means of broadcasting, television or cinematograph, the statement or prospectus by which the offer is required to be accompanied by virtue of subsection (3) shall be deemed to accompany the offer if —

(a) the statement or prospectus is prepared by the person on whose behalf the offer is made;

(b) the public are informed at the same time and by the same means as that by which the offer is made that a copy of the statement or prospectus will be supplied on request being made at a specified address in Norfolk Island; and

(c) where a request for a copy of a statement or prospectus is made at that address within one month after the offer was made - the person making the request is supplied with a copy within 7 days after the request was made.

(16) For the purposes of this section, a person shall not, in relation to a corporation, be regarded as not being a member of the public by reason only that he is a holder of securities in the corporation or a purchaser of goods from the corporation.

Application and interpretation of sections 643 to 646

642. (1) Sections 643 to 646 (inclusive) apply to a company —

(a) that has been wound up or is in the course of being wound up;

(b) that has been in the course of being wound up, where the winding up has been stayed or terminated by an order under section 486;

(c) that has at any time been, or is, under official management;

(d) affairs of which have been, or are, under investigation pursuant to Part 17 or under the repealed laws;

(e) in respect of property of which a receiver, or a manager, has at any time been appointed, whether by the Court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated;

(f) that has ceased to carry on business or is unable to pay its debts; or

(g) that has entered into a compromise or arrangement with its creditors.

(2) For the purposes of this section, a company —

(a) shall not be deemed to have ceased to carry on business unless the Registrar has —

(i) sent to the company by post a letter pursuant to the provisions of subsection 561(1) and has not, within the next succeeding period of one month from the date of the letter, received an answer to the effect that the company is carrying on business; or

(ii) published in the Gazette a notice pursuant to the provisions of subsection 561(3); and

(b) shall not be deemed to be unable to pay its debts unless execution or other process issued on a judgment or order of a court in favour of a creditor of the company is returned unsatisfied in whole or in part.

(3) In this section and in sections 643 to 646 (inclusive) —

"the appropriate officer" means —

(a) in relation to a company that has been, or is being wound up - the liquidator;

(b) in relation to a company that has been or is under official management - the official manager;

(c) in relation to a company affairs of which have been or are under investigation - the Registrar;

(d) in relation to a company in respect of the property or a part of the property of which a receiver, or a manager, has been appointed - the receiver or the manager;

(e) in relation to a company that has ceased to carry on business or is unable to pay its debts - the Registrar; and

(f) in relation to a company that has entered into a compromise or arrangement with its creditors - the person appointed by the Court to administer the compromise or arrangement;

"company" includes a body to which Division 5 of Part 22 applies;

"relevant day" means —

(a) in relation to a company that has been, has been being or is being wound up - the day on which under the provisions of this Act or of the repealed laws the winding up commenced or is to be deemed to have commenced;

(b) in relation to a company that has been or is under official management - the day on which it was determined that the company should be placed under official management;

(c) in relation to a company affairs of which have been or are under investigation - the day on which a direction was given to the Registrar to arrange for the investigation of those affairs;

(d) in relation to a company in respect of property part of which a receiver, or a manager, has been appointed - the day on which the receiver or manager was appointed;

(e) in relation to a company that is unable to pay its debts - the day on which the execution or other process was returned unsatisfied in whole or in part;

(f) in relation to a company that has ceased to carry on business - the day on which a letter was first sent to the company, or a notice was first published in the Gazette in relation to the company, as the case may be, under section 561; or

(g) in relation to a company that has entered into a compromise or arrangement with its creditors - the day on which the compromise or arrangement was approved by the Court.

Offences by officers of certain companies

643. (1) A person, who being a past or present officer of a company to which this section applies, is guilty of an offence if he —

(a) does not, so far as he is capable of doing so, disclose to the appropriate officer all the property of the company, and how and to whom and for what consideration and when a part of the property of the company was disposed of within the period of 5 years immediately preceding the relevant day, except such part as was disposed of in the ordinary course of the business of the company;

(b) does not deliver up to, or in accordance with the direction of, the appropriate officer —

(i) all the property of the company in his custody or under his control; or

(ii) all books in his custody or under his control belonging to the company;

(c) has within the period of 5 years immediately preceding the relevant day or at a time on or after that day —

(i) concealed or removed a part of the property of the company to the value of $100 or upwards;

(ii) concealed a debt due to or by the company;

(iii) fraudulently parted with, altered or made an omission in, or been privy to fraudulent parting with, altering or making an omission in, a book affecting or relating to affairs of the company;

(iv) by a false representation or other fraud, obtained on credit, for or on behalf of the company, property that the company has not subsequently paid for; or

(v) pawned, pledged or disposed of, otherwise than in the ordinary course of the business of the company, property of the company that has been obtained on credit and has not been paid for;

(d) makes a material omission from a statement, report or other document relating to affairs of the company;

(e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of his knowledge or belief;

(f) prevents the production to the appropriate officer of a book affecting or relating to affairs of the company;

(g) has, within the period of 5 years immediately preceding the relevant day or at a time on or after that day, attempted to account for a part of the property of the company by making entries in the books of the company showing fictitious transactions, losses or expenses; or

(h) has, within the period of 5 years immediately preceding the relevant day or at a time on or after that day, been guilty of a false representation or other fraud for the purpose of obtaining the consent of a creditor of the company to an agreement with a reference to affairs of the company or to the winding up.

Penalty: 10 penalty units or imprisonment or both.

(2) It is a defence to a charge arising under subparagraph (1)(c)(i) in relation to the removal of property of a company, or under subparagraph (1)(c)(v) in relation to property of a company, if the defendant proves that he did not have an intent to defraud.

(3) It is a defence to a charge arising under paragraph (1)(f) if the defendant proves that he did not have an intent to defraud.

(4) It is a defence to a charge arising under paragraph (1)(f) if the defendant proves that he did not have an intent to conceal the state of affairs of the company.

(5) Where a person pawns, pledges or disposes of property in circumstances that amount to an offence under subparagraph (1)(c)(v), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(6) A person who takes in pawn or pledge or otherwise receives property in circumstances mentioned in subsection (5) and with the knowledge mentioned in that subsection holds the property as trustee for the company concerned and is liable to account to the company for the property.

Offences where proper accounts not kept

644. (1) If —

(a) a provision of section 338 was not complied with, in respect of a company to which this section applies, during the whole or a part of the period of 2 years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day, whichever is the shorter; and

(b) the company was at a time during that period, or became at a later time, a company to which this section applies,

a director of the company who failed to take all reasonable steps to secure compliance by the company with the provision throughout that period and any officer of the company who is in default are each guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(2) In a proceeding against a person for an offence under subsection (1), it is a defence if the person proves that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that the relevant provision was complied with and was in a position to discharge that duty.

Offences relating to incurring of debts or fraudulent conduct

645. **(1)** If —

(a) a company incurs a debt, whether in or outside Norfolk Island;

(b) immediately before the time when the debt was incurred —

(i) there were reasonable grounds to expect that the company would not be able to pay all its debts as and when they became due; or

(ii) there were reasonable grounds to expect that, if the company incurred the debt, it would not be able to pay all its debts as and when they became due; and

(c) the company is, at the time when the debt was incurred, or becomes at a later time, a company to which this section applies,

a person who was a director of the company, or took part in the management of the company, at the time when the debt was incurred is guilty of an offence and the company and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

Penalty: 50 penalty units or imprisonment or both.

(2) In proceedings against a person for an offence under subsection (1), it is a defence if the person proves —

(a) that the debt was incurred without his express or implied authority or consent; or

(b) that at the time when the debt was incurred, he did not have reasonable cause to expect that —

(i) the company would not be able to pay all its debts as and when they became due; or

(ii) if the company incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or some other person, has been convicted of an offence under subsection (1) in respect of the incurring of that debt.

(4) Where subsection (1) renders a person or persons liable to pay a debt incurred by a company, the payment by that person or by either or any of those persons of the whole or a part of that debt does not render the company liable to the person concerned in respect of the amount so paid.

(5) If a company —

(a) does an act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the company or of some other person or for some other fraudulent purpose; and

(b) was at the time when the company did the act, or became at a later time, a company to which this section applies,

a person who was knowingly concerned in the doing of the act with that intent or for that purpose is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(6) A certificate issued by the proper officer of a court stating that a person specified in th e certificate —

(a) was convicted of an offence under subsection (1) in relation to a debt specified in the certificate incurred by a company so specified; or

(b) was convicted of an offence under subsection (5) in relation to a company specified in the certificate,

is, in any proceedings, evidence of the matters stated in the certificate.

(7) A document purporting to be a certificate issued under subsection (6) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly issued.

Powers of Court in respect of offences

646. (1) Where a person has been convicted of an offence under subsection 645(1) in respect of the incurring of a debt, the Court, on the application of the Registrar or of the person to whom the debt is payable, may, if it is just to do so, declare that the first-mentioned person is personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or to such part of it as the Court thinks just.

(2) Where a person has been convicted of an offence under subsection 645(5), the Court may, on the application of the Registrar or of a prescribed person, if it is just to do so, declare that the first-mentioned person is personally responsible without any limitation of liability for the payment to the company of the amount required to satisfy so much of the debts of the company as the Court thinks just.

(3) In relation to a company in respect of which a conviction referred to in subsection (2) relates —

(a) the appropriate officer;

(b) a creditor or contributory of the company authorised by the Registrar to make an application under that subsection; and

(c) if the company was a company to which section 645 applied by reason of paragraph 642(1)(c) - a member of the company,

are prescribed persons for the purposes of that subsection.

(4) Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks just for the purpose of giving effect to the declaration.

(5) In particular, the Court may order that the liability of the person under the declaration shall be a charge —

(a) on a debt or obligation due from the company to him; or

(b) on a right or interest under a charge on property of the company held by or vested in him or a person on his behalf, or a person claiming as assignee from or through the person liable or a person acting on his behalf.

(6) The Court may, from time to time, make such further orders as are just for the purpose of enforcing a charge imposed under subsection (5).

(7) For the purpose of subsection (5), "assignee" includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, other than consideration by way of marriage, given in good faith and without actual knowledge of the matters upon which the conviction or declaration was made.

(8) On the hearing of an application under subsection (1) or (2), the Registrar or other applicant may himself give evidence or call witnesses.

Certain rights not affected

647. Except as provided by subsection 645(4), subsection 645(1) or 646(1) or (2) does not affect a right of a person to indemnity, subrogation or contribution.

Inducement to be appointed liquidator or official manager

648. A person who gives, or agrees or offers to give, to a member or creditor of a company valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the liquidator, provisional liquidator or official manager of the company, as receiver, or manager, of the property or of a part of the property of the company or as a trustee or other person administering a compromise or arrangement in relation to the company is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Falsification of books

649. (1) An officer, former officer, member or former member of a company who conceals, destroys, mutilates or falsifies a security of or belonging to the company or book affecting or relating to affairs of the company is guilty of an offence.

Penalty: Ten penalty units or imprisonment or both.

(2) Where matter that is used or intended to be used in connection with the keeping of a book affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or other device, a person who —

(a) records or stores by means of that device matter that he knows to be false or misleading in a material particular;

(b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored, by means of that device; or

(c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device —

(i) with intent to falsify an entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

(ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored,

is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(3) In proceeding against a person under subsection (1) or (2), it is a defence if the person proves that he acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Frauds by officers

650. A person who, while an officer of a company —

(a) by a false pretence or by means of other fraud, induces a person to give credit to the company or to a related corporation;

(b) with intent to defraud the company or a related corporation or members or creditors of the company or of a related corporation, makes or purports to make, or causes to be made or to be purported to be made, a gift or transfer of or charge on, or causes or connives at the levying of an execution against, property of the company or of the related corporation; or

(c) with intent to defraud the company or a related corporation or members or creditors of the company or of a related corporation, conceals or removes part of the property of the company or of the related corporation after, or within 2 months before, the date of an unsatisfied judgment or order for payment of money obtained against the company or related corporation,

is guilty of an offence.

Court may disqualify person from acting as director, etc, in certain circumstances

651. (1) This section applies to a company —

(a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;

(b) that has been in the course of being wound up because of inability to pay its debs as and when they became due, where the winding up has been stayed or terminated by an order under section 486;

(c) that has been or is under official management;

(d) that has ceased to carry on business because it was unable to pay its debts as and when they became due;

(e) in respect of which a levy of execution was not satisfied;

(f) in respect of property of which a receiver or manager has been appointed, whether by a court or pursuant to the powers contained in an instrument and whether or not the appointment has been terminated; or

(g) that has entered into a compromise or arrangement with its creditors.

(2) Unless cause to the contrary is shown, the Court may, on an application by the Registrar, make an order prohibiting a person specified in the order from being a director or promoter of, or from being concerned or taking part in the management of a corporation during such period not exceeding 5 years after the date of the order as is specified in the order.

(3) The Court shall not make an order under subsection (2) in respect of a person unless it is satisfied —

(a) that the person was given notice of the application;

(b) that, within the period of 7 years before notice of the application was given to the person, whether that period commenced before or after the commencement of this Act, that person was a director of, or was concerned or took part in the management of, 2 or more companies to which this section applies; and

(c) that —

(i) in the case of each of those 2 companies; or

(ii) where the person was a director of, or was concerned or took part in the management of, more than 2 companies to which this section applies - in the case of each of 2 or more of those companies,

the manner in which affairs of the company were managed was responsible in whole or in part for the company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver or a manager, or entering into a compromise or arrangement with its creditors.

(4) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: 50 penalty units or imprisonment or both.

(5) For the purposes of this section —

(a) a reference to a company is a reference to —

(i) a corporation; or

(ii) a body of the kind referred to in paragraph 568(1)(b),

and includes a reference to a corporation or to body that has been dissolved;

(b) a company shall be taken to be a relevant company at a particular time if, within the period of 7 years ending at that time, a liquidator of the company has reported, whether under this Act or under the repealed laws, a matter relating to the ability of the company to pay its unsecured creditors; and

(c) a person shall be taken to be a relevant person in relation to a company that is or was a relevant company if the person was a director of the company at any time during the period of 12 months ending on the date of the commencement of the winding up of the company.

Registrar may order persons not to manage corporations

652. (1) For the purposes of this section —

(a) a reference to a company is a reference to —

(i) a corporation; or

(ii) a body of the kind referred to in paragraph 568(1)(b),

and includes a reference to such a corporation or body that has been dissolved;

(b) a company shall be taken to be a relevant company at a particular time if, within the period of 7 years ending at that time, a liquidator of the company has reported under —

(i) subsection 521(1); or

(ii) a provision of the repealed Acts to which subsection 521(1) corresponds,

a matter relating to the ability of the company to pay its unsecured creditors; and

(c) a person shall be taken to be a relevant person in relation to a company that is or was a relevant company if the person was a director of the company at any time during the period of 12 months ending on the date of the commencement of the winding up of the company.

(2) The Registrar may serve on a person who is a relevant person in relation to 2 or more companies that are, at the time of service, relevant companies a notice in writing requiring the person to show cause why the Registrar should not serve on the person a notice under subsection (3).

(3) Where the Registrar —

(a) has served on a person a notice under subsection (2); and

(b) has given the person an opportunity of being heard in relation to the matter,

the Registrar shall, unless it is not appropriate to do so, serve on the person a notice in writing prohibiting the person, for such period not exceeding 5 years as is specified in the notice, from being a director of promoter of, or from being in anyway (whether directly or indirectly) concerned in or taking part in the management of, a corporation without the leave of the Court.

(4) Where —

(a) the Registrar has served a notice under subsection (2) on a person who is relevant person in relation to 2 or more companies that were, at the time of service, relevant companies; and

(b) those 2 companies have at any time been related to each other, or any of those companies has at any time been related to any other of those companies, as the case may be,

the Registrar shall have regard to that fact in considering whether it is appropriate to serve on the person a notice under subsection (3).

(5) A person shall not contravene the requirements of a notice served under subsection (3) that is applicable to him or of a notice served under a provision of a law of a State or of a Territory other than Norfolk Island that corresponds with subsection (3), being a notice that is applicable to him.

Penalty: 50 penalty units or imprisonment or both.

False or misleading statements

653. (1) A corporation that advertises, issues or publishes a statement of the amount of its capital that is misleading or in which the amount of nominal or authorised capital is stated without the words "nominal" or "authorised", or in which the amount of capital or authorised or subscribed capital is stated but the amount of paid up capital or the amount of a charge on uncalled capital is not stated, and any officer of the corporation who knowingly authorises, directs or consents to the advertising, issue or publication, are each guilty of an offence.

(2) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Registrar, makes or authorises the making of a statement that to his knowledge is false or misleading in a material particular, or omits or authorises the omission of matter or a thing without which the document is to his knowledge misleading in a material respect, is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(3) A person who makes or authorises the making of a statement that is based on information that to his knowledge —

(a) is false or misleading in a material particular; or

(b) does not contain a matter or thing the omission of which renders the information misleading in a material respect,

shall, for the purposes of subsection (2), be deemed to have made or authorised the making of a statement that to his knowledge was false or misleading in a material particular.

(4) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Registrar —

(a) makes or authorises the making of a statement that is false or misleading in a material particular; or

(b) omits or authorises the omission of matter or a thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit matter or a thing without which the document would be misleading, as the case may be, is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(5) A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based —

(a) was not false or misleading in a material particular; and

(b) did not have omitted from it matter or a thing the omission of which would render the information misleading in a material respect,

shall for the purposes of subsection (4), be deemed to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

(6) For the purposes of subsections (2) and (3), where —

(a) at a meeting, a person votes in favour of a resolution approving or otherwise approves a document required by or for the purposes of this Act or required to be lodged with or submitted to the Registrar; and

(b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits matter or a thing without which the document is, to the person's knowledge, misleading in a material respect,

the person shall be deemed to have authorised the making of the statement or the omission of the matter or thing.

False information, etc

654. (1) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to —

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary - an auditor of the holding company; or

(c) a stock exchange in Australia or elsewhere or an officer of such a stock exchange,

being information, whether in documentary or any other form, that relates to the affairs of the corporation and, to the knowledge of the officer —

(d) is false or misleading in a material particular; or

(e) does not contain matter or a thing the omission of which renders the information misleading in a material respect,

is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

(2) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to —

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary - an auditor of the holding company; or

(c) a stock exchange in Australia or elsewhere or an officer of such a stock exchange,

being information, in whatever form, that relates to the affairs of the corporation and —

(d) is false or misleading in a material particular; and

(e) does not contain matter or a thing the omission of which renders the information misleading in a material respect,

without having taken reasonable steps to ensure that the information —

(f) was not false or misleading in a material particular; and

(g) did not have omitted from it matter or a thing the omission of which rendered the information misleading in a material respect,

is guilty of an offence.

Penalty: 50 penalty units or imprisonment or both.

(3) The references in subsections (1) and (2) to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of a corporation include references to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the corporation.

(4) Where information is made available or furnished to a person referred to in paragraph (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information shall be considered together in determining whether the information was false or misleading.

Dividends payable from profits only

655. (1) A dividend is not payable to the shareholder of a company except out of profits or pursuant to section 166.

(2) A director or executive officer of a company who wilfully pays or permits to be paid a dividend in contravention of subsection (1) —

(a) is, without prejudice to any other liability, guilty of an offence; and

(b) is also liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which dividends so paid have exceeded the profits.

(3) The amount for which a director or executive officer is liable under subsection (1) may be recovered by the creditors or by the liquidator suing on behalf of the creditors.

(4) If the whole amount is recovered from one director or executive officer, he may recover contribution against any other person liable who has directed or consented to the payment.

(5) A liability imposed by this section on a person does not, on the death of the person, extend or pass to his legal personal representative and the estate of the person is not liable under this section.

(6) In this section, "dividend" includes bonus and payment by way of bonus.

Restriction on use of word "Limited"

656. If a person carries on business under a name or title of which "Limited" or an abbreviation of that word is the final word or abbreviation, the person is guilty of an offence.

Penalty: 10 penalty units or imprisonment or both.

Restriction on use of word "Proprietary"

657. If a company uses the word "Proprietary" or an abbreviation of that word as part of its name and the company does not comply with the requirements of this Act with respect to proprietary companies, the company and each officer of the company who is in default are each guilty of an offence.

Reciprocity in relation to offences

658. If a person does or omits to do an act or thing in Norfolk Island and that person, if he had done or had omitted to do that act or thing in a State or in a Territory other than Norfolk Island, would have been guilty of an offence against a provision of a law of that State or Territory that corresponds with a provision of this Act, that person is guilty of an offence against that provision of this Act.

Offences committed partly in and partly out of Norfolk Island

659. If a person does or omits to do an act or thing outside Norfolk Island and that person, if he had done or omitted to do that act or thing in Norfolk Island, would, by reason of his also having done or omitted to do an act or thing in Norfolk Island, have been guilty of an offence against this Act, that person is guilty of that offence.

General penalty provisions

660. (1) A person who —

(a) does an act or thing that he is forbidden to do by or under a provision of this Act;

(b) does not do an act or thing that he is required or directed to do by or under a provision of this Act; or

(c) otherwise contravenes or fails to comply with a provision of this Act,

is, unless that provision or some other provision of this Act provides that he is guilty of an offence, guilty of an offence by virtue of this subsection.

(2) A person who is guilty of an offence against this Act, whether by virtue of subsection (1) or otherwise, is punishable, upon conviction, by a penalty not exceeding the penalty applicable to the offence.

(3) Where —

(a) a section that does not consist of 2 or more subsections provides that a person is in circumstances referred to in the section guilty of an offence; or

(b) subsection (1) operates in relation to a provision of this Act that is contained in a section that does not consist of 2 or more subsections so as to make a person guilty of an offence,

and a penalty, pecuniary or otherwise, is set out at the foot of the section, the penalty applicable to the offence is the penalty so set out.

(4) Where —

(a) a subsection of a section that consists of 2 or more subsections provides that a person is in circumstances referred to in the subsection guilty of an offence; or

(b) subsection (1) operates in relation to a provision of this Act that is contained in a subsection of a section that consists of 2 or more subsections so as to make a person guilty of an offence,

then —

(c) if a penalty, pecuniary or otherwise, is set out at the foot of the subsection - the penalty applicable to the offence is the penalty so set out; or

(d) if a penalty, pecuniary or otherwise, is set out at the foot of the section and no penalty is set out at the foot of the subsection - the penalty applicable to the offence is the penalty set out at the foot of the section.

(5) Where each of 2 or more subsections of a section contains a provision:

(a) that a person is in circumstances referred to in the subsection guilty of an offence; or

(b) in relation to which subsection (1) operates so as to make a person guilty of an offence,

and a penalty, pecuniary or otherwise, is set out at the foot of each of those subsections, the penalty applicable in relation to an offence created by either or any of those subsections, or in relation to an offence created by subsection (1) in relation to a provision contained in either or any of those subsections, is the penalty set out at the foot of the subsection concerned.

(6) Except as provided by the preceding provisions of this section, the penalty applicable in relation to an offence against this Act is a fine not exceeding 5 penalty units.

Penalty notices

661. (1) Where the Registrar has reason to believe that a person has, whether before or after the commencement of this Act, committed a prescribed offence, the Registrar may, subject to subsection (2), serve on the person a notice —

(a) stating that he believes that the person has committed the offence and giving the prescribed particulars in relation to the offence; and

(b) setting out the prescribed penalty in respect of the offence.

(2) The notice shall also state —

(a) in the case of an offence constituted by a failure to do a particular act or thing —

(i) that the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the penalty;

(ii) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the Registrar and does the act or thing, no further action will be taken against the person in relation to the offence; and

(iii) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar or has not done the act or thing, proceedings may be instituted against the person; or

(b) in the case of a prescribed offence this is not an offence constituted by a failure to do a particular act or thing —

(i) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the Registrar, no further action will be taken against the person in relation to the prescribed offence; and

(ii) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar, proceedings may be instituted against the person.

(3) Subsection (1) does not empower the Registrar —

(a) to serve on a person more than one notice under that subsection in relation to commission by that person of a particular offence; or

(b) to serve on a person a notice under that subsection in relation to an offence unless proceedings could be instituted against that person for that offence in accordance with section 640.

(4) A notice under subsection (1) may be served on a natural person either personally or by post.

(5) Where a notice under subsection (1) is served on a person in relation to an offence constituted by a failure to do a particular act or thing —

(a) if, within the period specified in the notice, the person has paid the prescribed penalty to the Registrar and does the act or thing - proceedings shall not be instituted against the person in respect of the offence;

(b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the Registrar but has not done the act or thing - proceedings shall not be instituted against the person in respect of the offence but the obligation to do that act or thing continues and section 662 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, he had been convicted of an offence constituted by a failure to do that act or thing;

(c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar but has done the act or thing - proceedings may be instituted against the person in respect of the offence; or

(d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar and has not done the act or thing - the obligation to do that act or thing continues and proceedings may be instituted against the person in respect of the prescribed offence.

(6) Where a notice under subsection (1) is served on a person in relation to an offence, not being an offence constituted by a failure to do a particular act or thing —

(a) if, within the period specified in the notice, the person has paid the prescribed penalty to the Registrar proceedings shall not be instituted against the person in respect of the offence; or

(b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar - proceedings may be instituted against the person in respect of the offence.

(7) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to an offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the offence.

(8) Except as provided by paragraphs (5)(a) and (b) and (6)(a), this section does not affect the operation of a provision of this Act, of the regulations, of the rules or of a law in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

Continuing offences

662. (1) Where —

(a) by or under this Act an act or thing is required or directed to be done within a particular period or before a particular time;

(b) failure to do that act or thing within that period or before that time constitutes an offence; and

(c) that act or thing is not done within that period or before that time,

the following provisions of this subsection have effect:

(d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done;

(e) where a person is convicted of an offence that is constituted by failure to do that act or thing within that period or before that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues;

(f) the penalty applicable to each such separate and further offence is a fine not exceeding one-half of a penalty unit.

(2) Where —

(a) by or under this Act an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified;

(b) failure to do that act or thing constitutes an offence; and

(c) a person is convicted of an offence in respect of a failure to do that act or thing,

that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues and the penalty applicable to each such separate and further offence is a fine not exceeding one-half of a penalty unit.

(3) Charges against the same person for any number of offences under paragraph (1)(e) or subsection (2) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.

(4) If a person is convicted of more than one offence under paragraph (1)(e) or more than one offence under subsection (2), the court may impose one penalty in respect of all the offences of which the person is so convicted but that penalty shall not exceed the aggregate of the maximum pecuniary penalties that could be imposed if a penalty were imposed in respect of each offence separately.

Officers and other persons in default

663. (1) Where a provision of this Act provides that an officer of a corporation or other person who is in default is guilty of an offence, the reference to that officer or other person shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any officer of the corporation (including a person who subsequently ceased to be an officer of the corporation) or any person, as the case may be, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

(2) For the purposes of subsection (1), a secretary of a corporation shall, unless the contrary is proved, be deemed to be knowingly concerned in and party to a contravention by the corporation of, or a failure by the corporation to comply with —

(a) a provision of section 271; or

(b) a provision of section 299 or 328 requiring the lodgment of a document with the Registrar.

Imprisonment

664. Where, by this Act, the penalty in respect of an offence is expressed to be a number of penalty units or imprisonment or both, the period of imprisonment that may be imposed on a natural person in respect of the offence is a period that does not exceed the period ascertained in accordance with the following table:

TABLE

Number of penalty units		**Maximum period of imprisonment**
Not exceeding	10	Six months
Exceeding 10 but not exceeding	25	One year
Exceeding 25 but not exceeding	50	Two years
Exceeding 50 but not exceeding	100	Five years
Exceeding 100		Ten years

Power of Court to prohibit payment or transfer of moneys, securities or other property

665. (1) Where —

(a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute an offence against this Act;

(b) a prosecution has been instituted against a person for an offence against this Act; or

(c) a civil proceeding has been instituted against a person under this Act,

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person to whom the person referred to in paragraph (a), (b) or (c), as the case may be (in this section referred to as "the relevant person"), is liable or may be or become liable to pay moneys, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for securities or other property, the Court may, on application by the Registrar, make one or more of the following orders:

(d) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to a person associated with the relevant person from making a payment in total or partial discharge of the debt to, or to some other person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting, either absolutely or subject to conditions, a person holding money, securities or other property, on behalf of the relevant person or on behalf of a person associated with the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to some other person at the direction or request of, the person on whose behalf the moneys, securities or other property are held;

(f) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Norfolk Island of moneys of the relevant person or of a person associated with the relevant person;

(g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or other property of the relevant person or of a person associated with the relevant person from a place in Norfolk Island to a place outside Norfolk Island (including a transfer of securities from a register in Norfolk Island to a register outside Norfolk Island);

(h) an order appointing —

(i) where the relevant person is a natural person - a receiver or trustee, with such powers as the Court orders, of the property or of part of the property of that person; or

(ii) where the relevant person is a body corporate - a receiver or manager, with such powers as the Court orders, of the property or of part of the property of that person;

(i) where the relevant person is a natural person - an order requiring that person to deliver up to the Court such documents (including his passport) as the Court thinks fit;

(j) where the relevant person is a natural person - an order prohibiting that person from leaving Norfolk Island without the consent of the Court.

(2) Where an application is made to the Court for an order under subsection (1), the Court may make an interim order, being an order of the kind applied for, that is expressed to have effect pending the determination of the application.

(3) The Court shall not require the Registrar or any other person, as a condition of making an interim order, to give an undertaking as to damages

(4) Where the Court has made an order under this section, the Court may, on application by the Registrar or by a person affected by the order, make a further order rescinding or varying the first-mentioned order.

(5) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under this section.

(6) A person shall not contravene or fail to comply with an order by the Court under this section that is applicable to him.

Penalty: 25 penalty units or imprisonment or both.

Injunctions

666. (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of —

(a) the Registrar; or

(b a person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is just to do so, requiring that person to do an act or thing.

(2 Where a person has refused or failed, is refusing or failing or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of —

(a the Registrar; or

(b) a person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if it is just to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised —

(a) if the Court is satisfied that the person has engaged in conduct of that kind - whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind - whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to a person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

(a) if the Court is satisfied that the person has refused or failed to do that act or thing - whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely the person will refuse or fail to do that act or thing - whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to a person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Registrar makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Registrar or some other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(8) Where the Court has power under this section to grant an injunction against a person, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to some other person.

Power of Court to punish for contempt

667. This Act does not affect the powers of the Court in relation to the punishment of contempts of the Court.

PART 28 — RULES AND REGULATIONS

Rules

668. The power of the Court to make rules of court extends to making rules of court, not inconsistent with this Act —

(a) with respect to proceedings in, and the practice and procedure of, the Court under this Act;

(b) with respect to a matter or thing that is —

(i) required or permitted by this Act to be prescribed by rules; or

(ii) necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act; and

(c) without limiting the generality of paragraph (a) or (b), with respect to costs and with respect to meetings ordered by the Court.

Regulations

669. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters that are —

(a) required or permitted by this Act to be prescribed by Regulations; or

(b) necessary or convenient to be prescribed by Regulations for carrying out or giving effect to this Act.

(2) In particular, regulations so made may include provisions —

(a) for or in relation to the keeping of registers by the Registrar, the lodging of documents with the Registrar, the registration of documents by the Registrar, the time and manner of lodging or registration, and the requirements with which documents lodged or to be lodged with the Registrar are to comply;

(b) prescribing forms for the purposes of this Act and the method of verifying information required by or in such a form;

(c) prescribing the manner in which, the persons by whom, and the directions or requirements in accordance with which, a form prescribed for the purposes of this Act is required or permitted to be signed, prepared or completed and generally regulating the signing, preparation and completion of such a form;

(d) for or in relation to the convening of, conduct of, and procedure and voting at, meetings of creditors, meetings of contributories and meetings of holders of debentures, and joint meetings of creditors and members of companies, the number of persons required to constitute a quorum at such a meeting, the sending of notices of meetings to persons entitled to attend at meetings, the lodging with the Registrar of copies of notices of, and of resolutions passed at, meetings, and generally regulating the conduct of, and procedure at, such a meeting;

(e) prescribing the persons by whom, and the circumstances and manner in which, proxies may be appointed and generally regulating the appointment and powers of proxies;

(f) for or in relation to the proving of debts in the winding up of a company, the manner of proving debts and the time within which debts are required or permitted to be proved and generally regulating the proving of debts;

(g) prescribing the manner in which a liquidator appointed by the Court may —

(i) exercise his powers and perform his functions under subsection 482(1); and

(ii) exercise a power conferred, and perform a duty imposed, on him by Regulations made for the purposes of subsection 492(1);

(h) prescribing the manner in which a liquidator in a voluntary winding up may exercise his powers and perform his functions under section 511;

(i) prescribing times for the lodging of a document with the Registrar; and

(j) prescribing penalties not exceeding 5 penalty units for an offence against the Regulations.

(3) Except as otherwise expressly provided by this Act, the Regulations may be of general or limited application or may make different provisions with respect to times, localities, places or circumstances.

(4) The Regulations may —

(a) where a document that is required by or under this Act to be lodged in accordance with this Act is required to be verified or certified and a manner of verification or certification is not prescribed by or under this Act - require that the document be verified or certified by statement in writing made by such person as is prescribed by the Regulations; and

(b) where no express provision is made in this Act for verification or certification of a document - require that the document be verified or certified by a statement in writing by such person as is prescribed by the regulations.

(5) A person shall not, with respect to a document, be proceeded against for an offence in consequence of a regulation made pursuant to this section as well as for an offence against subsection 653(2).

(6) The regulations may provide, in the prescribed cases, that, if a document that is required by or under this Act to be lodged with the Registrar is signed or so lodged on behalf of a person by his agent duly authorised in writing, there shall be lodged with, endorsed on or annexed to that document, the original or a verified copy of the authority.

PART 29 — TRANSITIONAL PROVISIONS

Application

670. (1) This Part has effect unless a contrary intention appears in this Act or a contrary intention arises by necessary intendment.

(2) This Part is in addition to and not in substitution for any of the provisions of the *Interpretation Act 1979*.

General provision

671. All persons, things, matters or circumstances appointed, created or arising under the repealed laws and existing or continuing immediately before the commencement of this Act continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.

Particular provisions

672. (1) This section has effect without limiting the effect of section 671.

(2) The enactment of this Act does not affect the continuity of status, operation or effect of an appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, decision, requisition, instrument, memorandum, incorporation, nomination, call, forfeiture, minute, assignment, register, registration, transfer, licence, certificate, security, notice, compromise, arrangement, right, liability, priority, duty, obligation, proceeding, matter or other thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the repealed laws.

Resolution of difficulties in application of transitional provisions

673. (1) Where a difficulty arises in the application to a particular matter of a provision of this Act or of the repealed laws by reason of the operation of any of the previous provisions of this Part, the Court may, on the application of the Registrar or of an interested person, make such order as is just to resolve the difficulty.

(2) An order so made has effect notwithstanding anything contained in this Act or in the repealed laws.

SCHEDULE 1

ENACTMENTS REPEALED *Section 4*

Companies Act 1926

Companies Act 1966

Companies Act 1969

Companies Act 1971

Companies (Amendment) Act 1977

Companies (Amendment) Act (No 2) 1977

Companies (Amendment) Act (No 3) 1977

Companies (Amendment) Act 1978

Companies (Amendment) Act 1980

Companies (Amendment) Act 1981

Companies (Local Companies) Act 1982

SCHEDULE 2

ORDER OF PRIORITY OF REGISTRABLE CHARGES

Section 256

1. **(1)** A registered charge on property of a company has priority over —

(a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;

(b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and

(c) an unregistered charge on the property created after the creation of the registered charge

(2) A registered charge on property of a company is postponed to —

(a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created

2. An unregistered charge on the property of a company has priority over —

(a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 1; and

(b) another unregistered charge on the property created after the first-mentioned unregistered charge

3. **(1)** Except as provided by the succeeding sub-clauses of this clause, any priority accorded to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability

(2) Where a registered charge on property of a company secures —

(a) a present liability and a prospective liability of an unspecified amount; or

(b) a prospective liability of an unspecified amount,

any priority accorded to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge

(3) Where a registered charge on property of a company secures —

(a) a present liability and a prospective liability up to a specified maximum amount; or

(b) a prospective liability up to a specified maximum amount,

and the notice lodged with the Registrar under section 253 or 254 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability

(4) Where —

(a) a registered charge on property of a company secures —

(i) a present liability and a prospective liability up to a specified maximum amount; or

(ii) a prospective liability up to a specified maximum amount,

but the notice lodged with the Registrar under section 253 or 254 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or

(b) a registered charge on property of a company secures a prospective liability of an unspecified amount,

the following provisions of this sub-clause have effect:

(c) any priority accorded to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge;

(d) any priority accorded to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made

4. **A** reference in this Schedule to a person having notice of a charge includes a reference to the person having constructive notice of the charge

5. In this Schedule —

(a) a reference to a prior registered charge in relation to another registered charge is a reference to a charge the priority time of which is earlier than the priority time of the other charge; and

(b) a reference to a subsequent registered charge in relation to another registered charge is a reference to a charge the priority time of which is later than the priority time of the other registered charge

6. In this Schedule —

"priority time", in relation to a registered charge, means —

(a) except as provided by paragraph (b) or (c) - the time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 255;

(b) where a notice has been lodged under section 254 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Part 11 - the earlier or earliest time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 255; and

(c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged with the Registrar under subsection 261(2) - the time and date entered in the Register in relation to the charge pursuant to subsection 255(13);

"registered charge", means a charge that is registered under Part 11;

"unregistered charge", means a charge that is not registered under Part 11 but does not include a charge that is not registrable

COMPARATIVE TABLE

of provisions of this enactment and provisions of the *Companies Act 1981* of the Commonwealth

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
1	.....	1
2	.....	2
-	.....	3
4	.....	4
-	.....	5
5(1)	.....	6
5(1A)	.....	7
5(2)	.....	8
5(3)	.....	9
5(4)	.....	10
-	.....	11
-	.....	12
5(1)	.....	13
5(1)	.....	14
5(1)	.....	15
5(1)	.....	16
5(1)	.....	17
5(9)	.....	18
-	.....	19
6	.....	20
7(1)	.....	21
7(3)	.....	22
7(4)	.....	23
7(5)	.....	24
7(6)	.....	25
7(7)	.....	26
8	.....	27
9	.....	28
5(5)	.....	29
-	.....	30
-	.....	31
10	.....	32
11	.....	33
12	.....	34
13	.....	35
14	.....	36
15	.....	37

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
16	.....	38
16A	.....	39
-	.....	40
-	.....	41
17	.....	42
18	.....	43
19	.....	44
20	.....	45
21	.....	46
22	.....	47
23	.....	48
24	.....	49
24(3)	.....	50
24(4)	.....	51
25	.....	52
26	.....	53
29	.....	54
30	.....	55
30B	.....	56
30D	.....	57
30R	.....	58
31(1)	.....	59
31(2)-(4)	.....	60
31(5)(6)	.....	61
31(7)	.....	62
31(8)	.....	63
31(9)	.....	64
31(10)	.....	65
31(11)	.....	66
32	.....	67
33	.....	68
34	.....	69
35	.....	70
35(4)	.....	71
36	.....	72
37	.....	73
37(2)	.....	74
37(4)	.....	75
37(5)	.....	76
39	.....	77
38	.....	78
40	.....	79

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
43	.....	80
46	.....	81
49	.....	82
58	.....	83
63	.....	84
65	.....	85
66	.....	86
66(8)	.....	87
66(11)	.....	88
67	.....	89
68	.....	90
68(4)	.....	91
68(6)	.....	92
68A	.....	93
68B	.....	94
68C	.....	95
68D	.....	96
69	.....	97
70	.....	98
71	.....	99
72	.....	100
73	.....	101
73(8)	.....	102
73(12)	.....	103
-	.....	104
74	.....	105
75	.....	106
76	.....	107
77	.....	108
78	.....	109
79	.....	110
80	.....	111
80(7)	.....	112
80(8)	.....	113
80(10)	.....	114
81	.....	115
81(4)	.....	116
81(7)	.....	117
81(8)	.....	118
81(10)	.....	119
81(11)	.....	120

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
81(12)	.....	121
82	.....	122
94	.....	123
95	.....	124
96	.....	125
97	.....	126
97(4)	.....	127
97(5)	.....	128
97(5)	.....	129
97(6)	.....	130
97(10)	.....	131
97(11)	.....	132
97(12)	.....	133
97(13)	.....	134
98	.....	135
98(7)	.....	136
98(10)	.....	137
99	.....	138
100	.....	139
101	.....	140
102	.....	141
103	.....	142
104	.....	143
105	.....	144
106	.....	145
107	.....	146
107(5)	.....	147
107(7)	.....	148
107(8)	.....	149
108	.....	150
110	.....	151
110(5)	.....	152
110(8)	.....	153
110(11)	.....	154
110(12)	.....	155
110(13)	.....	156
110(10)	.....	157
111	.....	158
112	.....	159
113	.....	160
114	.....	161
92, 115	.....	162
116	.....	163

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
117	.....	164
118	.....	165
119	.....	166
120	.....	167
121	.....	168
122	.....	169
123	.....	170
123(3)	.....	171
123(5)	.....	172
123(7)	.....	173
123(8)	.....	174
123(9)	.....	175
123(10)	.....	176
123(11)	.....	177
123(13)	.....	178
123(12)	.....	179
124	.....	180
125	.....	181
126	.....	182
127	.....	183
128	.....	184
131	.....	185
132	.....	186
133	.....	187
-	.....	188
129	.....	189
129(6)	.....	190
129(8)	.....	191
129(9)	.....	192
129(10)	.....	193
129(11)	.....	194
129(12)	.....	195
129(15)	.....	196
129(17)	.....	197
130	.....	198
130(6)	.....	199
130(7)	.....	200
130(9)	.....	201
130(11)	.....	202
130(13)	.....	203
130(14)	.....	204
130(15)	.....	205
-	.....	206

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
-	.....	207
-	.....	208
-	.....	209
-	.....	210
-	.....	211
-	.....	212
-	.....	213
-	.....	214
147(11)	.....	215
147(1)	.....	216
148	.....	217
149	.....	218
150	.....	219
151	.....	220
152	.....	221
153	.....	222
154	.....	223
155	.....	224
156	.....	225
157	.....	226
158	.....	227
158(4)	.....	228
158(5)	.....	229
158(6)	.....	230
158(7),(8)	.....	231
158(12)	.....	232
158(18)	.....	233
158(19)	.....	234
158(22)	.....	235
159	.....	236
160	.....	237
161	.....	238
163	.....	239
178	.....	240
179	.....	241
180	.....	242
181	.....	243
182	.....	244
183	.....	245

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
184	.....	246
185	.....	247
186	.....	248
187	.....	249
188	.....	250
199	.....	251
200	.....	252
201	.....	253
202	.....	254
203	.....	255
204	.....	256
205	.....	257
205(3)	.....	258
205(4)	.....	259
205(5)	.....	260
206	.....	261
207	.....	262
208	.....	263
209	.....	264
210	.....	265
212	.....	266
215	.....	267
215A	.....	268
215B	.....	269
215C	.....	270
216	.....	271
217	.....	272
218	.....	273
219	.....	274
220	.....	275
221	.....	276
222	.....	277
223	.....	278
224	.....	279
225	.....	280
226	.....	281
227	.....	282
227A	.....	283
228	.....	284
229	.....	285
230	.....	286
230(3)	.....	287

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
230(5)	.....	288
230(8)	.....	289
230(10)	.....	290
213	.....	291
232	.....	292
233	.....	293
234	.....	294
235	.....	295
236	.....	296
237	.....	297
238	.....	298
238(7)	.....	299
238(8)	.....	300
238(9)	.....	301
238(10)	.....	302
238A	.....	303
239	.....	304
240	.....	305
241	.....	306
242	.....	307
243	.....	308
244	.....	309
245	.....	310
246	.....	311
247	.....	312
248	.....	313
249	.....	314
250	.....	315
251	.....	316
252	.....	317
253	.....	318
254	.....	319
256	.....	320
257	.....	321
258	.....	323
259	.....	323
260	.....	324
261	.....	325
261A	.....	326
262	.....	327
263	.....	328
264	.....	329
265	.....	330

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
-	.....	331
-	.....	332
266	.....	333
266A	.....	334
266C	.....	335
266E	.....	336
266F	.....	337
267	.....	338
268	.....	339
269	.....	340
270	.....	341
272	.....	342
273	.....	343
274	.....	344
275	.....	345
275A	.....	346
276	.....	347
277	.....	348
277(12)	.....	349
277(16)	.....	350
279	.....	351
280	.....	352
281	.....	353
282	.....	354
283	.....	355
284	.....	356
285	.....	357
286	.....	358
287	.....	359
289	.....	360
290	.....	361
291	.....	362
292	.....	363
293	.....	364
295	.....	365
296	.....	366
297	.....	367
298	.....	368
299	.....	369
300	.....	370
301	.....	371
302	.....	372
303	.....	373

Commonwealth Companies Act 1981		Norfolk Island Companies Act 1985
304	.....	374
304	.....	375
305	.....	376
306	.....	377
307	.....	378
308	.....	379
309	.....	380
309(3)	.....	381
309(7)	.....	382
310	.....	383
311	.....	384
311	.....	385
312	.....	386
315(22)	.....	387
315(1)	.....	388
315(4)	.....	389
315(5)	.....	390
315(6)	.....	391
315(7)	.....	392
315(10)	.....	393
315(11)	.....	394
315(12)	.....	395
315(13)	.....	396
315(15)	.....	397
315(18)	.....	398
316	.....	399
317	.....	400
318	.....	401
318(10)	.....	402
319	.....	403
319(2)	.....	404
320	.....	405
-	.....	406
321	.....	407
322(3)	.....	408
323	.....	409
324	.....	410
324A	.....	411
324B	.....	412
324C	.....	413
324C(3)	.....	414
324D	.....	415
324E	.....	416

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
324F	.....	417
325	.....	418
325A	.....	419
326	.....	420
327	.....	421
328	.....	422
329	.....	423
329A	.....	424
330	.....	425
331	.....	426
332	.....	427
333	.....	428
335	.....	429
335(9)	.....	430
335(16)	.....	431
336	.....	432
337	.....	433
338	.....	434
339	.....	435
340	.....	436
341	.....	437
342	.....	438
343	.....	439
344	.....	440
345	.....	441
346	.....	442
347	.....	443
348	.....	444
349	.....	445
350	.....	446
351	.....	447
352	.....	448
353	.....	449
354	.....	450
355(1)	.....	451
355(3)	.....	452
355(6)	.....	453
355(7)	.....	454
355(9)	.....	455
355(16)	.....	456
355(17)	.....	457
355(20)	.....	458
355(21)	.....	459

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
356	.....	460
357	.....	461
390	.....	462
359	.....	463
360	.....	464
361	.....	465
362	.....	466
363	.....	467
364	.....	468
365	.....	469
366	.....	470
367	.....	471
368	.....	472
369	.....	473
370	.....	474
371	.....	475
372	.....	476
373	.....	477
374	.....	478
375	.....	479
376	.....	480
377	.....	481
378	.....	482
379	.....	483
381	.....	484
382	.....	485
383	.....	486
384	.....	487
385	.....	488
386	.....	489
387	.....	490
388	.....	491
389	.....	492
391	.....	493
392	.....	494
393	.....	495
394	.....	496
395	.....	497
396	.....	498
397	.....	499
397(4)	.....	500
398	.....	501
398(5)	.....	502

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
399	.....	503
400	.....	504
401	.....	505
403	.....	506
404	.....	507
405	.....	508
406	.....	509
407(2)	.....	510
408	.....	511
409	.....	512
410	.....	513
411	.....	514
412	.....	515
413	.....	516
414	.....	517
415	.....	518
416	.....	519
417	.....	520
418	.....	521
419	.....	522
420	.....	523
421	.....	524
421A	.....	525
422	.....	526
423	.....	527
424	.....	528
425	.....	529
426	.....	530
427	.....	531
429	.....	532
430	.....	533
431	.....	534
432	.....	535
433	.....	536
434	.....	537
435	.....	538
436	.....	539
437	.....	540
438	.....	541
438(2)	.....	542
439	.....	543
440	.....	544
441	.....	545

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
443	.....	546
444	.....	547
445	.....	548
445	.....	549
447	.....	550
448	.....	551
450	.....	552
451	.....	553
452	.....	554
453	.....	555
454	.....	556
455	.....	557
456	.....	558
457	.....	559
458	.....	560
459	.....	561
460	.....	562
461	.....	563
462	.....	564
463	.....	565
464	.....	566
468	.....	567
469	.....	568
470	.....	569
471	.....	570
472	.....	571
473	.....	572
490	.....	573
491	.....	574
492	.....	575
493	.....	576
494	.....	577
495	.....	578
496	.....	579
497	.....	580
498	.....	581
499	.....	582
504A	.....	583
504A	.....	584
504C	.....	585
510	.....	586
511	.....	587
512	.....	588

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
513	.....	589
514	.....	590
515	.....	591
516	.....	592
517	.....	593
518	.....	594
518(3)	.....	595
518(10)	.....	596
518(11)	.....	597
518(12)	.....	598
518(33)	.....	599
518(14)	.....	600
520	.....	601
521	.....	602
522	.....	603
523	.....	604
524	.....	605
525	.....	606
526	.....	607
527	.....	608
528	.....	609
530	.....	610
528(7)	.....	611
530A	.....	612
531	.....	613
532	.....	614
533	.....	615
539	.....	616
533	.....	617
534	.....	618
535	.....	619
539	.....	620
537	.....	621
540	.....	622
541	.....	623
542	.....	624
543	.....	625
544	.....	626
545	.....	627
546	.....	628
547	.....	629
548	.....	630
549	.....	631

Commonwealth Companies Act 1981		**Norfolk Island Companies Act 1985**
550	.....	632
-	.....	633
-	.....	634
-	.....	635
-	.....	636
-	.....	637
-	.....	638
-	.....	639
-	.....	640
552	.....	641
553	.....	642
554	.....	643
555	.....	644
556	.....	645
557	.....	646
558	.....	647
559	.....	648
560	.....	649
561	.....	650
562	.....	651
562A	.....	652
563	.....	653
564	.....	654
565	.....	655
566	.....	656
567	.....	657
568	.....	658
569	.....	659
570	.....	660
570A	.....	661
571	.....	662
572	.....	663
-	.....	664
573	.....	665
574	.....	666
575	.....	667
576	.....	668
577	.....	669
-	.....	670
-	.....	671
-	.....	672
-	.....	673
-	.....	SCHEDULE 1
SCHEDULE 5	.....	SCHEDULE 2

NOTES

The *Companies Act 1985* as shown in this consolidation comprises Act No. 15 of 1986 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
Companies Act 1985	15, 1986	21.7.1986	
Companies Amendment Act 1993	24, 1993	28.10.1993	
Companies Amendment Act 2000	2, 2000	17.2.2000	
[Previously consolidated as at 15 July 2005]			
Companies (Amendment) Act 2008	2, 2008	5.1.2008	
[Previously consolidated as at 8 February 2008]			
Interpretation (Amendment) Act 2012 [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected
44A	ad 2, 2008
78	am 24, 1993
78(ab)	ad 24, 1993
78(2)	ad 24, 1993
78(3)	ad 24, 1993
122A	ad 2, 2000
122B	ad 2, 2000
608A-608K	ad 2, 2008

Printed on the authority of the Administrator.

© Norfolk Island Government 2013

The *Copyright Act 1968* of the Commonwealth of Australia permits certain reproduction and publication of this legislation. For reproduction or publication beyond that permitted by the Act, written permission must be sought from the Legislative Counsel, Administration of Norfolk Island, Norfolk Island, South Pacific 2899.