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GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Justice at the date of its preparation for inclusion, except for Section 40(7)(b), Section 40(7)(c) and Section 40(8) the administration of which is vested in the Minister for Finance.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in and in relation to this Chapter to—

“the Departmental Head”—should be read as references to the Secretary for Justice;

“the Department”—should be read as references to the Department of Justice.

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PART IV.—CONSTITUTION OF COMPANIES.

Division 1.—Incorporation.

16. Formation.

(1) Subject to this Act, five or more persons, or (where the company to be formed will be a proprietary company) two or more persons, who are associated for a lawful purpose may by—

- (a) subscribing their names to a memorandum; and
- (b) 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; or
- (b) a company limited by guarantee; or
- (c) a company limited both by shares and by guarantee; or
- (d) an unlimited company; or
- (e) in the case of a mining company, a no liability company.

(3) An association or partnership consisting—

- (a) in the case of an association or partnership formed for the purpose of carrying on any profession or calling declared by the Minister, by notice in the National Gazette, to be a profession or calling that is not customarily carried on in the country by a corporation—of more than 50 persons; or
- (b) in any other case—of more than 20 persons,

that has for its object the acquisition of gain by the association or partnership or individual members of it may not be formed unless it is incorporated under this or some other Act, or letters patent.

17. Proprietary companies.

(1) A company having a share capital (other than a no liability company) may be incorporated as a proprietary company if its memorandum or articles—

- (a) restricts the right to transfer its shares; and
- (b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of a subsidiary of it, or any person who, while previously in the employment of the company or of a subsidiary, was and has continued to be a member of the company); and
- (c) prohibits any invitation to the public to subscribe for shares in or debentures of the company; and
- (d) prohibits any invitation to the public to deposit money with the company for fixed periods or payable at call, whether or not bearing interest.

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

(3) Where, on the application of the Principal Legal Adviser 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 Subsection (1)(c) or (d) that is included in the memorandum or articles of the company, the Court may by order determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.

(4) Where—

- (a) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in Subsection (1)(b) that is included in the memorandum or articles of the company; or
 - (b) a proprietary company has been convicted of an offence against Subsection (9); or
 - (c) the memorandum or articles of a proprietary company have been so altered that they no longer include restrictions, limitations or prohibitions of the kind specified in Subsection (1); or
 - (d) a proprietary company has ceased to have a share capital,
- the Registrar may, by notice served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

(5) 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, on and from the date specified in the order or notice; and
- (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) the company shall, within a period of 14 days after the date of the order or the notice, lodge with the Registrar—

- (i) a statement in lieu of prospectus; and
- (ii) a statutory declaration in the prescribed form verifying that Section 55(2)(b) has been complied with; and
- (iii) where an order has been made under Subsection (3)—an office copy of the order.

(6) Where the Court is satisfied that a default or alteration referred to in Subsection (3) or (4) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as seem to the Court just and expedient, determine that the company has not ceased to be a proprietary company.

(7) 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

(8) If default is made in complying with Subsection (5)(c), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(9) Where a subscription for shares in or debentures of, or a deposit of money with, a proprietary company is arranged by or through a lawyer, broker, agent or other person (whether an officer of the company or not) who—

- (a) invites the public to make use of his services in arranging investments; or
- (b) holds himself out to the public as being in a position to arrange investments, the company, and each person, including an officer of the company, who is a party to the arrangement, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(10) Where default is made in relation to a proprietary company in complying with any restriction, limitation or prohibition of a kind specified in Subsection (1) that is included in the memorandum or articles of the company, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

18. Registration and incorporation.

(1) Persons desiring 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, on payment of the appropriate fees, the Registrar shall, subject to this Act, register the company by registering the memorandum and articles (if any).

(2) If he thinks fit, the Registrar may require to be lodged with him a statutory declaration in the prescribed form by a lawyer engaged in the formation of the company or by a person named in the articles as a director or secretary of the company stating that all or any of the requirements of this Act have been complied with, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3) On the registration of the memorandum, the Registrar shall certify under his hand and seal, by a certificate in the prescribed form, that the company is, on and from the date specified in the certificate, incorporated, and that the company is—

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

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

(4) On and from 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 may from time to time become members of the company, are a corporation by the name contained in the memorandum capable of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession and a common seal with power to hold land, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

(5) A certificate of incorporation under the hand and seal of the Registrar is conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to registration have been complied with, and that the company referred to in the certificate is duly incorporated under this Act.

(6) This section shall, in relation to the acceptance of a memorandum or articles and the issue of a certificate of incorporation, be read subject to Division III.8 of the *Stamp Duties Act*.

Division 2.—Membership.

19. Membership generally.

The subscribers to the memorandum shall be deemed to have agreed to become members of the company and, on the incorporation of the company, shall be entered as members in its register of members, and every other person who agrees to become a member of a company and whose name is entered in its register of members is a member of the company.

20. Membership of holding companies.

(1) A corporation cannot be a member of a company that is its holding company, and any allotment or transfer of shares in a company to a subsidiary of it is void.

(2) Subsection (1) does not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of the holding company is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) This section does not prevent a subsidiary that was, at the commencement date, a member of its holding company from continuing to be such a member but, subject to Subsection (2), the subsidiary has no right to vote at meetings of the holding company or of any class of members of the holding company.

(4) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it became a subsidiary of the holding company, it already held shares in the holding company, but—

- (a) subject to Subsection (2), the subsidiary has no right to vote at meetings of the holding company or of any class of members of the holding company; and
- (b) the subsidiary shall, within the period of 12 months, or 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.

(5) Subject to Subsection (2), Subsections (1), (3) and (4) 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 a nominee for it.

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

21. Minimum membership.

If—

- (a) at any time the number of members of a company is reduced—

- (i) in the case of a proprietary company (other than a proprietary company the whole of the issued shares of which are held by a holding company that is a public company under this Act or under the law of a State or Territory of Australia)—below two; or

- (ii) in the case of any other company—below five; and
 (b) it carries on business for more than six months while the number is so reduced,

all persons who are members of the company during the time that it so carries on business after those six months and are cognizant of the fact that it is carrying on business with fewer than two or five members (as the case may be) are severally liable for the payment of the whole debts of the company contracted during the time that it so carries on business after those six months and may be severally sued for them, and the company and each such member is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

Division 3.—Name

2. Restriction on names.

- (1) Except with the consent of the Minister, a company shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, at the Minister has directed the Registrar not to accept for registration.
- (2) The Minister shall cause a direction given by him under Subsection (1) to be published in the National Gazette and a copy of the direction to be forwarded to the Attorney-General of Australia and of each State of Australia.
- (3) A limited company shall have the word "Limited" or the abbreviation "Ltd." as part and at the end of its name.
- (4) A no liability company shall have the words "No Liability" or the abbreviation "N.L." as part of and at the end of its name.
- (5) 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.
- (6) A description of a company shall not be deemed to be inadequate or incorrect by reason of the use of—
 - (a) the abbreviation "Co." or "Coy." instead of the word "Company" contained in the name of the company; or
 - (b) the abbreviation "Pty." instead of the word "Proprietary" contained in the name of the company; or
 - (c) the abbreviation "Ltd." instead of the word "Limited" contained in the name of the company; or
 - (d) the character "&" instead of the word "and" contained in the name of the company; or
 - (e) the abbreviation "N.L." instead of the words "No Liability" contained in the name of the company; or
 - (f) any of such words in place of the corresponding abbreviation or character contained in the name of the company.
- (7) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as—
 - (a) the name of an intended company; or
 - (b) the name to which a company proposes to change its name; or

- (d) the name under which a foreign company proposes to be registered, either originally or on change of name.

(8) If the Registrar is satisfied as to the bona fides of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of Subsection (1), he shall reserve the proposed name for a period of two months from the date of lodging of the application.

(9) If at any time during a period for which a name is reserved application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may extend that period for a further period of two months.

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

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

23. Change of name.

(1) A company may, by special resolution and with the approval of the Registrar, change its name to a name by which the company could be registered without contravention of Section 22(1).

(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of Section 22(1), the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within six weeks after the date of the direction or such longer period as the Registrar allows unless the Minister by written notice annuls the direction.

(3) A company that fails to comply with a direction under Subsection (2) is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) Where the name of a company incorporated under a corresponding previous law has not been changed since the commencement date, the Registrar shall not, except with the approval of the Minister, exercise his power under Subsection (2) to direct the company to change its name.

(5) A change of name under this Act does not affect the identity of the company or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

24. Omission of "Limited".

(1) Where it is proved to the satisfaction of the Minister that a proposed limited company—

- (a) is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity or pension or superannuation schemes or any other object useful to the community; and
- (b) will apply its profits (if any) or other income in promoting its objects; and
- (c) will prohibit the payment of any dividend to its members,

the Minister 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 direct that it 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 it is proved to the satisfaction of the Minister—

- (a) that the objects of a limited company are restricted to those specified in Subsection (1) and to objects incidental or conducive to the objects so specified; and
- (b) that, by its constitution, the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members,

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

(3) A licence under this section may be issued on such conditions as the Minister thinks proper, and those conditions are binding on the company and, if the Minister so directs, shall 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 any such direction.

(4) While a licence issued under this section or under any corresponding previous law in force, the company is exempted from complying with the provisions of this Act relating to the use of the word "Limited" as any part of its name and, except where the Minister otherwise directs, from the lodging of annual returns and of returns of particulars of directors, managers and secretaries and the publication of accounts.

(5) Subject to Subsection (6), a licence issued under this section or under any corresponding previous law may be revoked by the Minister and, on revocation, the Registrar shall enter the word "Limited" at the end of the name of the company on the register, and the company thereupon ceases to enjoy the exemptions and privileges granted by this Act by reason of the licence.

(6) Before a licence is revoked under Subsection (5), the Minister shall give to the company written notice of his intention and shall afford it an opportunity to be heard.

Division 4.—Conversion to other Types of Company.

Unlimited companies and companies limited by guarantee.

(1) Subject to this section, an unlimited company may convert to a limited company, a company limited by guarantee may convert to a company limited both by shares and by guarantee, by passing a special resolution determining to convert and lodging with the Registrar for registration a copy of the resolution.

(2) On the giving of the copy of the resolution, the Registrar shall, subject to the Act—

- (a) register the copy; and
 - (b) make such endorsements in or alterations to his registers as are necessary to record the effect of the resolution with respect to the conversion; and
 - (c) issue to the company a certificate of incorporation of the company altered to meet the circumstances of the case, and cancel the previous certificate of incorporation of the company.
- (3) On issuing the certificate of incorporation, the Registrar may, by written notice served on the company, dispense with the lodging by the company of any document that has been lodged with him on the occasion of or after the incorporation of the company.
- (4) The conversion takes effect on the issue of the certificate of incorporation under Subsection (2).
- (5) A conversion of a company under this section does not affect the identity of the company or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it before the conversion may, notwithstanding the conversion, be continued or commenced by or against it after the conversion.

26. Public companies and proprietary companies.

(1) A public company having a share capital (other than a no liability company) may convert to a proprietary company by lodging with the Registrar a copy of a special resolution (together with notice of it in the prescribed form)—

- (a) determining to convert to a proprietary company and specifying an appropriate alteration to 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 Section 17(1).

(2) A proprietary company may, subject to anything contained in its memorandum or articles, convert to a public company by lodging with the Registrar—

- (a) a copy of a special resolution (together with notice of it in the prescribed form) determining to convert to a public company and specifying an appropriate alteration to its name; and
- (b) a statement in lieu of prospectus; and
- (c) a statutory declaration in the prescribed form verifying that Section 55(2)(b) has been complied with,

and thereupon the restrictions, limitations and prohibitions of the kind referred to in Section 17(1) as included in the memorandum or articles of the company cease to form part of the memorandum or articles.

(3) On compliance by a company with the provisions of Subsection (1) or (2), the Registrar shall issue, in the prescribed form, a certificate of incorporation of the company altered accordingly and, on the issue of the certificate, the company becomes a proprietary company or a public company, as the case may be.

(4) A conversion of a company under Subsection (1) or (2) does not affect the identity of the company or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that could have been

352. Balance-sheet and accounts.

(1) An investment company must state under separate headings in every balance-sheet of the company, in addition to any other matters required to be stated in the balance-sheet—

- (a) the investments of the company of a kind not referred to in Clause 2(b) of Schedule 8; and
 - (b) the manner in which the investments of the company have been valued.
- (2) An investment company must attach to every balance-sheet of the company—
- (a) a complete list of all purchases and sales of securities by the company during the period to which the accounts relate, together with a statement of the total amount of brokerage paid or charged by the company during that period and the proportion of that amount paid to any stock broker or share broker, or an employee or nominee of any stock broker or share broker, who is an officer of the company; and
 - (b) a complete list of all the investments of the company as at the date of the balance-sheet, showing the descriptions and quantities of the investments.
- (3) An investment company must show separately in the profit and loss account, in addition to any other matters required to be shown in it, income from underwriting, including sub-underwriting.

353. Investment fluctuation reserve.

- (1) The net profits and losses of an investment company from the purchase and sale of securities must be respectively credited and debited by the company to a reserve account to be kept by it and to be called "the investment fluctuation reserve".
- (2) The investment fluctuation reserve is not available for the payment of dividends.
- (3) The investment fluctuation reserve is available for the payment of income tax payable in respect of profits made on the sale of securities.

354. Offences against Division 2.

- (1) If default is made by an investment company in complying with this Division, the investment company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K2 000.00.

Default penalty: A fine not exceeding K200.00.

- (2) A transaction entered into by the company is not invalid by reason only of a default referred to in Subsection (1).

Division 3.—Foreign Companies.**355. Interpretation of Division 3.**

- (1) In this Division, unless the contrary intention appears—

"agent" means the person named in a memorandum of appointment or power of attorney lodged under Section 358(1)(e) or (8) or the public officer appointed under any corresponding previous law;

"carrying on business" includes establishing or using a share transfer or share registration office, or administering, managing or otherwise dealing with

property situated in the country as an agent, personal representative or trustee, whether by servants or agents or otherwise.

(2) Notwithstanding Subsection (1), a foreign company shall not be regarded as carrying on business within Papua New Guinea for the reason only that, within Papua New Guinea, 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 proceeding or of a claim or dispute; or
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
- (c) maintains a bank account; or
- (d) effects a sale through an independent contractor; or
- (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Papua New Guinea; or
- (f) creates evidence of a debt or creates a charge on property; or
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to any such debts; or
- (h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property.

16. Application of Division 3.

This Division applies to a foreign company only if it has a place of business, or is carrying on business, within Papua New Guinea.

17. Holding of land.

Subject to any other Act, a foreign company registered under this Division has power hold land in Papua New Guinea¹.

18. Lodgement of documents, etc.

(1) A foreign company must, within one month after it establishes a place of business commences to carry on business within Papua New Guinea, lodge with the Registrar for registration—

- (a) a certified copy of the certificate of its incorporation or registration issued in its place of incorporation or origin, or a document of similar effect; and
- (b) a certified copy of its charter, statute, memorandum, memorandum and articles or other instrument constituting or defining its constitution; and
- (c) a list, in the prescribed form, of its directors, containing similar particulars with respect to its directors as are required by this Act to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act; and
- (d) where the list includes directors resident in Papua New Guinea who are members of the local board of directors, a memorandum duly executed by or

on behalf of the foreign company stating the powers of the local directors; and

(e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and verified by statutory declaration in the prescribed manner, stating the name and address, or names and addresses, of one or more persons (other than foreign companies) resident in Papua New Guinea and authorized to accept on its behalf service of process and any notices required to be served on it; and

(f) notice in the prescribed form of the situation of its registered office in Papua New Guinea and, unless the office is open and accessible to the public for at least five hours between 10 a.m. and 4 p.m. of each day (Saturdays, Sundays and public holidays excepted), the days and hours during which it is open and accessible to the public; and

(g) a statutory declaration, in the prescribed form, made by the agent of the company,

and the Registrar shall register the company under this Division by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar under Subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which the person is authorized to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, must be lodged with the Registrar.

(3) A copy lodged under Subsection (2) shall for all purposes be regarded as an original.

(4) A foreign company must have a registered office within Papua New Guinea to which all communications and notices may be addressed, and which shall be open and accessible to the public for not less than three hours between the hours of 9 a.m. and 5 p.m. of each day (Saturdays, Sundays and public holidays excepted).

(5) Until he ceases to be such in accordance with Subsection (7), an agent—

- (a) continues to be the agent of the company; and
- (b) is answerable for the doing of all acts, matters and things that are required to be done by the company by or under this Act; and
- (c) is personally liable to all penalties imposed on the company for any contravention of this Act unless he satisfies the court hearing the matter that he should be not liable.

(6) A foreign company or its agent may lodge with the Registrar a written notice in the prescribed form, stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(7) The agent in respect of whom the notice has been lodged ceases to be an agent—

- (a) on the expiration of a period of 21 days after the date of lodgement of the notice, or if the notice states a date on which he is to so cease and the date is later than the expiration of that period on that date; or
- (b) on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with Subsection (8), whichever is the earlier.

(8) Where—

- (a) an agent ceases to be the agent and the company is then without an agent in Papua New Guinea; and
 - (b) the company continues to carry on business or has a place of business in Papua New Guinea,
- must, within 21 days after the agent ceases to be the agent, appoint an agent and lodge—
- (a) a memorandum of his appointment and a statutory declaration in accordance with Subsection (1); and
 - (b) if not already lodged under Subsection (2), a copy of the deed, document or power of attorney referred to in that subsection verified in accordance with that subsection.

(9) On the registration of a foreign company under this Division, the lodging with the Registrar of particulars of a change or alteration in a matter referred to in Section 359(1)(c) or the registration by the Registrar of a change or alteration in the name of a foreign company, the Registrar shall issue a certificate in the prescribed form under his hand and seal, and the certificate is evidence in all courts of the particulars mentioned in the certificate.

9. Returns as to alterations.

(1) Where a change or alteration is made in—

- (a) the charter, statute, memorandum, articles or other instrument a copy of which is lodged by a foreign company with the Registrar under Section 358(1)(b); or
- (b) the directors of a foreign company; or
- (c) the agent or agents of a foreign company or the address of an agent; or
- (d) the situation of the registered office of a foreign company in Papua New Guinea, or of the days or hours during which it is open and accessible to the public; or

(e) the address of the registered office of a foreign company in its place of incorporation or origin; or

(f) the name of a foreign company; or

(g) the powers of any directors resident in Papua New Guinea who are members of the local board of directors of the foreign company,

foreign company must, within one month or within such further period as the Registrar special circumstances allows after the change or alteration, lodge with the Registrar in the prescribed form of the change or alteration, and such other documents as the regulations require.

(2) If a foreign company increases its authorized share capital, it must, within one month or such further period as the Registrar in special circumstances allows after the increase, lodge with the Registrar notice in the prescribed form of the amount from which, of the amount to which, it has been so increased.

(3) If a foreign company not having a share capital increases the number of its members beyond the registered number, it must, within one month or such further period as the Registrar in special circumstances allows after the increase was resolved on or took effect, lodge with the Registrar notice in the prescribed form of the increase.

360. Balance-sheet and annual returns.

(1) Subject to this section, a foreign company must, at least once in every 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—

- (a) in such form; and
- (b) containing such particulars; and
- (c) including copies of such documents,

as is required by the law applicable to the company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(2) If the Registrar is of the opinion that the balance-sheet and other documents referred to in Subsection (1) do not sufficiently disclose the company's financial position, he may require the company to lodge a balance-sheet—

- (a) within such period; and
- (b) in such form; and
- (c) containing such particulars; and
- (d) including such documents,

as the Registrar by written notice to the company requires, but this subsection does not authorize the Registrar to require a balance-sheet to contain any particulars or include any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(3) The company must comply with the requirements set out in the notice.

(4) Where a foreign company is not required by the law of the place of its incorporation or origin to prepare a balance-sheet, the company must prepare and lodge with the Registrar a balance-sheet—

- (a) within such period; and
- (b) in such form; and
- (c) containing such particulars; and
- (d) including such documents,

as would be required if the company were a public company incorporated under this Act.

(5) Subject to Subsection (6), this section does not apply to or in relation to a foreign company—

- (a) that is an exempt private company under the law of the United Kingdom relating to companies; or
- (b) that is included in a class of corporations that the Minister has declared, by notice in the National Gazette, to be a class of corporations of a kind the same, or substantially the same, as exempt proprietary companies under this Act; or
- (c) is included in a class of corporations that the Minister has declared, by notice in the National Gazette, to be a class of corporations of a kind the same, or substantially the same, as proprietary companies under this Act, where no beneficial interest in any share in the company is held, directly or indirectly, otherwise than by a natural person; or

(d) that is a corporation incorporated in the United Kingdom, or in a State or Territory of Australia, and that has, by the law of the place of its incorporation, exemptions and privileges similar to those that are provided for in Section 24; or

(e) that is an association incorporated in a State or Territory of Australia under a law of the place of its incorporation that makes special provision for the incorporation of associations that are formed for the purpose of providing recreation or amusement, or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, and that are by their constitutions prohibited from the payment of dividends to their members.

(6) A foreign company referred to in Subsection (5)(a), (b) or (c) must, at least once in every calendar year, lodge with the Registrar a return in the prescribed form made up to the date of its annual general meeting.

(7) The return must 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.

61. Fees.

(1) Where, on the registration of a corporation as a foreign company or on the lodging of a foreign company of a notice under Section 359(2), the Registrar certifies in writing that he is satisfied that the company has established in Papua New Guinea a share transfer share registration office but otherwise has not carried on, is not carrying on and does not propose to carry on business in Papua New Guinea, the liability to pay such part (if any) of the fee payable under Item 17, 18, 19 or 20 of Schedule 1 in respect of the registration or lodging of the notice as exceeds K1 000.00 is, by force of this section, suspended until the corporation commences otherwise to carry on business in Papua New Guinea or fails to comply with Subsection (2), whichever first occurs, but thereupon the corporation is liable to pay to the Registrar that part of the fee.

(2) So long as a suspension under Subsection (1) of liability to pay a fee in respect of a corporation continues, the corporation must lodge with the Registrar in each year, at the time when a copy of its balance-sheet or a return under Section 360 is lodged with the Registrar, a notice in the prescribed form with respect to the business being carried on in Papua New Guinea by the corporation.

(3) Where a foreign company in respect of which the Registrar has issued a certificate under Subsection (1) commences to carry on business in Papua New Guinea otherwise than by reason of establishing or using a share transfer or share registration office, it must, within 14 days after so commencing, lodge with the Registrar notice in the prescribed form of the commencement of the business.

Names of foreign companies.

(1) A foreign company must—

(a) except in the case of a banking corporation—

(i) conspicuously exhibit outside its registered office and every place of business established by it in Papua New Guinea its name and the place where it is formed or incorporated; and

(ii) cause its name and the place where it is formed or incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and

(b) if the liability of its members is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd."), cause notice of that fact—

(i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices and other official publications in Papua New Guinea; and

(ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Papua New Guinea.

(2) If a foreign company incorporated under the law of a State or Territory of Australia—

(a) is placed under official management in its place of incorporation by any law or enactment corresponding to Part X; or

(b) is being wound up,

every invoice, order for goods or business letter on or in which the name of the company appears, issued by or on behalf of—

(c) the company; or

(d) an official manager or liquidator of the company; or

(e) a receiver or manager of the property of the company,

must have the words "Under Official Management" or "In Liquidation" (whichever is appropriate) immediately after the name of the company where it first appears.

(3) If default is made in complying with Subsection (2), the company, and every officer of the company who knowingly and wilfully authorizes or permits the default, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(4) Except with the consent of the Minister, a foreign company shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Minister has, under Section 22, directed the Registrar not to accept for registration.

(5) Except with the consent of the Minister, a change in the name of a foreign company shall not be registered if the new name of the company is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Minister has, under Section 22, directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with Section 359.

(6) A foreign company to which this Division applies must not use in Papua New Guinea any name other than the name under which it is registered under this Division or under any other Act.

(7) If default is made in complying with Subsection (6), the foreign company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K200.00.

163. Service of documents.

A document required to be served on a foreign company is sufficiently served—

- (a) if it is addressed to the foreign company and left at or sent by post to its registered office in Papua New Guinea; or
- (b) if it is addressed to an agent of the company and left at or sent by post to his registered address.

164. Cesser of business, etc.

(1) If a foreign company ceases to have a place of business or to carry on business in Papua New Guinea it must, within seven days after so ceasing, lodge with the Registrar notice in the prescribed form of that fact.

(2) If a foreign company has ceased both to have a place of business and to carry on business in Papua New Guinea, its obligation to lodge any document (not being a document that ought to have been lodged before the company so ceased) with the Registrar ceases, and the Registrar shall, on the expiration of 12 months after the lodging of the notice, remove the name of the company from the register.

(3) If a foreign company goes into liquidation or is dissolved in its place of corporation or origin—

(a) each person who, immediately before the commencement of the liquidation proceedings, was its agent must, within one month after the commencement of the liquidation or the dissolution, as the case may be, or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of that fact and, when a liquidator is appointed, notice of the appointment; and

(b) the liquidator has, until a liquidator for Papua New Guinea is duly appointed by the Court, the powers and functions of a liquidator for Papua New Guinea.

(4) If a foreign company incorporated under the law of a State or Territory of Australia is placed under official management in its place of incorporation by any law or actment corresponding to Part X., or if the period of official management is terminated, the company must within one month after the commencement or termination or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of that fact.

(5) A liquidator of a foreign company appointed for Papua New Guinea by the Court, a person exercising the powers and functions of such a liquidator—

(a) must, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of Australia where the foreign company had been carrying on business before the liquidation and for which no liquidator has been appointed, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution; and

(b) may not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign company; and

(c) may, unless otherwise ordered by the Court, recover and realize only the assets of the foreign company that are in Papua New Guinea and shall pay the net amount so recovered and realized to the liquidator of the foreign company for the place where it was formed or incorporated.

(6) Where a foreign company has been wound up so far as its assets in Papua New Guinea are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in accordance with Subsection (5).

(7) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(8) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Papua New Guinea, the provisions of this Act relating to the striking off the register of the names of defunct companies, with such adaptations as are necessary, apply accordingly.

365. Branch registers.

(1) Subject to this section, a foreign company that has a share capital must keep at its registered office in Papua New Guinea or at some other place in Papua New Guinea a branch register for the purpose of registering shares of members resident in Papua New Guinea who apply to have the shares registered in it.

(2) A foreign company is not obliged to keep a branch register under Subsection (1) until after the expiration of one month in the case of a foreign company incorporated within Australia, or two months in the case of any other foreign company, from the receipt by it of a written application by a member resident in Papua New Guinea for registration in its branch register in Papua New Guinea of the shares held by him.

(3) If default is made in complying with Subsection (1), the foreign company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) This section does not apply to a foreign company that, by its constitution, prohibits any invitation to the public to subscribe for shares in the company.

(5) Where a register is required to be kept by this section—

(a) it must be kept in the manner provided by Division VI.4 as though the register were the register of a company; and

(b) transfers must be effected on that register in the same manner and at the same charges as on the principal register of the company; and

(c) transfers lodged at its registered office in Papua New Guinea are binding on the company; and

(d) the Court has the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in Papua New Guinea.

(6) Where a foreign company opens a branch register in Papua New Guinea, it must, within 14 days after opening the register, lodge with the Registrar notice in the prescribed form of the fact, specifying the address where the register is kept, and where immediately before the commencement date a foreign company was maintaining a branch register in Papua New Guinea and continues to maintain it on and after that date, it shall, for the purposes of this subsection, be deemed to have opened the branch register on that date.

(7) Where a change is made in the place where the register is kept or where the register is discontinued, the company must, within 14 days after the change or discontinuance, lodge with the Registrar notice in the prescribed form of the change or discontinuance.

(8) Where a company or corporation is entitled under a law of a place of incorporation of a foreign company corresponding with Section 196 to give notice to a consenting shareholder in the foreign company that it desires to acquire any of his shares registered on a branch register kept in Papua New Guinea, this section ceases to apply to foreign company until—

- (a) the shares have been acquired; or
 - (b) the company or corporation has ceased to be entitled to acquire the shares.
- (9) Subject to this Act, on application by a member resident in Papua New Guinea a foreign company must register in a branch register of the company the shares held by a member that are registered in any other register kept by the company.

(10) Subject to this Act, on application by a member holding shares registered in a branch register a foreign company must remove the shares from the branch register and register them in such other register as is specified in the application.

(11) Sections 159, 160 and 161 apply, with such adaptations as are necessary, to the removal of persons holding shares in a branch register of a foreign company and to the section and closing of the register.

(12) Sections 103, 104 and 105(1), Section 107(1) and (3) and Section 163 apply, with such adaptations as are necessary, with respect to the transfer of shares on and the cancellation of the branch register of a foreign company.

(13) A branch register of a foreign company is evidence of any matters directed or authorized by this Division to be inserted in it.

Certificate re share-holdings.

A certificate under the seal of a foreign company specifying any shares held by a member of that company and registered in the branch register is evidence of the title of the member to the shares and the registration of the shares in the branch register.

Offences against Division 3.

If default is made by a foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company, each officer of the company who is in default and each agent of the company knowingly authorizes or permits the default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

Division 4.—Companies in Respect of Which the Provisions of this Act may be Varied.

Interpretation of Division 4.

In this Division, unless the contrary intention appears—

"local person" means an aboriginal inhabitant of the country or a person who follows, adheres to or adopts the customs of, or who lives after the manner of, the aboriginal inhabitants of the country¹;

"the substitute provision", in relation to any provision of this Act specified in the first column of Schedule 10, means the provision set opposite that provision in the second column of that Schedule.

369. Application of Division 4.

- (1) This Division applies to—
- (a) a company or proposed company the membership of which comprises—
 - (i) local persons; and
 - (ii) companies to which this Division applies; and
 - (iii) business groups incorporated under the *Business Groups Incorporation Act*; and
 - (iv) Local Government Councils; and
 - (v) Local Government Authorities; and
 - (vi) statutory authorities or instrumentalities of the State, or any of them; and
- (b) a company declared under Subsection (2) to be a company to which this Division applies.
- (2) When the Head of State, acting on advice, is of the opinion that—
- (a) the membership of a company is substantially composed of persons referred to in Subsection (1)(a); and
 - (b) the management of the company is substantially controlled by local persons,
- the Head of State, acting on advice, may, by notice in the National Gazette, declare the company to be a company to which this Division applies.

(3) When the Head of State, acting on advice, is of the opinion that Subsection 2(a) and (b) is no longer applicable to a company declared under that section to be a company to which this Division applies, the Head of State, acting on advice, may, by notice in the National Gazette, revoke the declaration of the company as a company to which this Division applies, and after the date of the notice any provision of this Act from compliance with which the company, an officer of the company or any other person was relieved by virtue of the declaration applies to and in relation to the company.

370. Relief from statutory requirements.

(1) Where the Registrar is satisfied that a company is a company to which this Division applies, he may, by order published in the National Gazette, relieve the company, the officers of the company or any other person from compliance with all or any of the requirements of this Act specified in the first column of Schedule 10.

(2) Subject to Subsection (3), where the Registrar makes an order under Subsection (1) in relation to a company, the substitute provision (if any) applies in the place of any provision from compliance with which the company, an officer of the company or any other person has been relieved.

(3) The regulations may amend Schedule 10 in its application to a company to which this Division applies, or to a class of company to which this Division applies, by altering or omitting any provision or substitute provision or inserting a new provision or substitute provision.

(4) The Registrar may revoke an order made by him under Subsection (1).

(5) An order under Subsection (1) remains in force until—

- (a) it is revoked by the Registrar; or
- (b) it is set aside by order of the National Court; or

(c) the company ceases to be a company to which this Division applies, whichever first happens.

371. Appeals.

- (1) A member or creditor of a company in respect of which the Registrar has made an order under Section 370(1) may apply to the National Court to have the order set aside on the ground that the company should not be relieved from compliance with any or all of the provisions to which the order relates.
- (2) A company in respect of which the Registrar has revoked an order under Section 370(1), or a member or creditor of such a company, may apply to the National Court to have the revocation order set aside on the ground that the revocation of the order is not, in all the circumstances, reasonable or just.
- (3) A company or a member or creditor of a company may appeal to the National Court against the failure or refusal of the Registrar to make an order under Section 370(1) on the grounds that—
 - (a) the company is a company to which this Division applies; and
 - (b) it is reasonable and just that the company, the officers of the company or any other person, be relieved from compliance with all or any of the requirements of this Act specified in the first column of Schedule 10.

372. Effect of order of Registrar.

Where the Registrar has made an order under Section 370(1) in relation to a company and the order is still in force—

- (a) compliance with the substitute provision shall be deemed to be compliance with the provision of this Act for which the provision is the substitute; and
- (b) failure to comply with a substitute provision shall be deemed to be a failure to comply with the provision of this Act for which the provision is the substitute.

Division 5.—Co-operative Companies¹.

3. Interpretation of Division 5.

In this Division, unless the contrary intention appears, "co-operative company" means a company limited both by shares and by guarantee whose articles comply with Section 377 and that includes as part of its name the word "co-operative".

4. Incorporation of co-operative companies.

- (1) A company limited both by shares and guarantee may be incorporated as a co-operative company if its memorandum or articles—
 - (a) include the word "co-operative" in the name of the company; and
 - (b) contain provisions that comply with Section 377.
- (2) A company may convert to a co-operative company by lodging with the Registrar a copy of a special resolution (together with notice of it in the prescribed form)—
 - (a) determining to convert to a co-operative company and specifying an appropriate alteration to its name; and

¹ Division XL1.5 was inserted (as Division XL1.5) by the pre-Independence Companies (Co-operative Companies) Act 1975, which was not in force on the effective date. It came into force on 22 January 1976. See Footnote 1 on p.17.

- (b) alter the provisions of its memorandum or articles as far as is necessary—
 - (i) to make the company limited both by shares and guarantee; and
 - (ii) to include provisions that comply with Section 377.

375. Loss of co-operative company status.

- (1) A company ceases to be a co-operative company if—
 - (a) it is no longer limited by both shares and guarantee; or
 - (b) its name no longer contains the word "co-operative"; or
 - (c) its articles do not comply with Section 377.
- (2) A company that has ceased to be a co-operative company by virtue of Subsection (1)—
 - (a) is a public or proprietary company, as the case may be, and shall be deemed to have been a public or proprietary company, as the case may be, since the occurrence of the event by which it ceased to be a co-operative company; and
 - (b) shall be deemed to have changed its name, on the date on which it ceased to be a co-operative company, by the omission from its name of the words "co-operative" or "society", or both, as the case requires.

376. Issue and redemption of shares.

Notwithstanding any other provision of this Act, shares in a co-operative company—

- (a) may only be issued as fully paid; and
- (b) may be redeemed in accordance with Section 63 as if they were redeemable preference shares.

377. Articles of association.

- (1) The articles of a co-operative company shall include provision that—

- (a) membership is open to any individual and any business group incorporated under the *Business Groups Incorporation Act* and to no other person, but the articles, with the approval of the Registrar, may provide that membership is open to such corporations incorporated by or under a law as are specified by name or class in the articles and to no other person; and
- (b) no person other than a member may own shares in the company, except that the executor or administrator of the estate of a deceased member may be registered as the owner of the shares held by that member at the time of his death; and
- (c) membership is not transferable, but shares are transferable to any member; and
- (d) all members holding shares amounting to or exceeding a number specified in the articles have equal voting rights, and no other member has voting rights except in respect of a special resolution; and
- (e) all shares in the company have equal rights to—

- (i) such dividends as are declared by the company in general meeting, being limited in any year to a total rate of return on the nominal value of the shares that does not exceed by more than 2% the rate of interest in respect of passbook account deposits offered by the Papua New

Guinea Banking Corporation at the time when the dividend is declared; and

(ii) in the case of winding-up of the company, repayment of their nominal value,

and the rights have priority over any distribution of profits to members as such but no shareholder has, by virtue of his shareholding, any further or greater rights to share in a distribution of the company's profits or assets; and

(f) subject to the ability of the company to redeem at their nominal value and in accordance with Section 63 any shares held by the member, a general meeting may resolve to expel a member for any reason other than on account of the member's race, religion or political beliefs, but the company shall, at the time of the expulsion of a member, redeem at their nominal value any shares held by him; and

(g) subject to Subsection (2), where—

(i) a member who is a shareholder submits his resignation as a member—the company shall redeem all shares held by him before accepting his resignation; and

(ii) the executor or administrator of the estate of a deceased shareholder so requests—the company must redeem the shares in the company that form part of the estate; and

(b) where the company redeems shares other than shares held by a member being expelled, the shares shall be redeemed in accordance with Section 63, and—

(i) at a price determined by the directors, not exceeding the nominal value of the shares; or

(ii) for no value if the company has no funds out of which shares may be redeemed; and

(z) each director shall—

(i) be a member of the company; or

(ii) be a member of a corporation that is a member of the company; or

(iii) be a member of a corporation that has an indirect interest in a corporation referred to in Subparagraph (ii).

(2) Nothing in Subsection (1)(g) prevents a shareholder, or the executor or administrator of a shareholder, from selling shares to another member before the shares are deemed.

78. Distribution, etc., of profits.

(1) The net profit of a co-operative company (after setting aside all amounts required to satisfy any levies due to the Co-operative Education Trust established by the *Co-operative Education Trust Act* and all amounts approved in general meeting for the provision of donations for charitable purposes or community welfare the benefit of which will not accrue primarily to members) made during any accounting period shall be first applied to paying any dividend declared for that period in respect of issued shares.

(2) Any surplus net profit available for distribution after meeting dividend commitments shall be apportioned between a members' distribution fund and a non-distributable reserve fund in proportion to the value of business done by the company with members and with non-members respectively during the accounting period to which the surplus relates.

(3) Subject to Subsections (4) and (7), any profit apportioned to a members' distribution fund in accordance with Subsection (2) may not be distributed, in whole or in part, otherwise than rateably between the members in proportion to the value of business done by the company with each member during the accounting period in which the profit was realized.

(4) The profit distributable to a member who does not hold fully paid shares in the company sufficient to give him full voting rights in accordance with the articles shall, to the extent necessary to pay up that minimum number of shares, not be distributed in cash but shall be attributed toward paying up that number of shares in the name of the member.

(5) Profits apportioned to a non-distributable reserve fund in accordance with Subsection (2) shall be transferred to such a reserve fund and, subject to Subsection (6), shall not be distributed to members.

(6) On a winding-up or when the company ceases to be a co-operative company, money in any non-distributable reserve fund shall not be distributed to members but—

(a) shall be donated to a charity or used for community welfare, the benefit of which will not accrue primarily to members, as determined in general meeting; or

(b) shall be paid into the Co-operative Education Trust established by the *Co-operative Education Trust Act*,

but, where the assets of the company on a winding-up are insufficient to meet the liabilities of the company, the costs of liquidation and the repayment of capital to shareholders, so much of the non-distributable reserve fund as is necessary may be applied by the liquidator toward satisfying those obligations or any of them.

(7) On a winding-up, any distributable surplus remaining after all liabilities (including capital repayment and identifiable rateable distributions to members) have been satisfied shall be distributed equally between all persons who were members of the company at the date of the winding-up.

(8) Where a co-operative company distributes or allocates profits to members otherwise than in accordance with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

PART XIII.—OFFENCES AND PENALTIES GENERALLY.

379. Interpretation of Part XIII.

(1) In this Part—

“appropriate officer” means—

(a) in relation to a company that is in course of being wound up—the liquidator; and

(b) in relation to a company that is under official management—the official manager; and

(c) in relation to a company in respect of which an inspector has been appointed under Division VII.3 or VII.4—the person nominated as the appropriate officer in the particular case by the Principal Legal Adviser; and

(d) in relation to a company in respect of which a receiver or manager has been appointed—the receiver or manager; and