

**LAWS OF KIRIBATI
REVISED EDITION 1979**

CHAPTER 10A

COMPANIES

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY AND OFFICIAL ADMINISTRATION

1. Short title and commencement
2. Interpretation
3. Extent of application of the Ordinance
4. Limitation of partnerships etc.
5. Registrar
6. Maintenance of register for each company and filing of documents
7. Late filing fees
8. Regulations

PART II

FORMATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

9. Procedure for incorporation
10. Type of companies
11. Duties of promoters
12. Pre-incorporation contracts
13. Articles of companies
14. The name of a company
15. Publication and use of the name of the company
16. Registered office
17. Objects and powers of companies
18. Alteration of objects
19. Form of Rules forming part of the Articles of a company
20. Alteration of Articles
21. Minimum paid up share capital
22. Commencement and continuation of business
23. Membership of companies
24. Register of members
25. Companies ceasing to have members
26. Missing members

Section

SHARES AND SHARE CAPITAL

27. Nature of shares and transfer of shares
28. Certification of transfers
29. Company's lien on shares
30. Numbering of shares
31. Issue and effect of share certificates
32. Classification of shares
33. Variation of class rights
34. Voting rights
35. Canons of construction of class rights
36. Allotment of equity shares
37. Issue of shares at a discount
38. Prohibition of financial assistance for acquisition of shares
39. Loans to and acquisition of shares in holding company
40. Commission on shares
41. Share capital
42. Alteration of capital
43. Registration of resolution altering capital
44. Premiums on shares
45. Redeemable shares
46. Reduction of capital
47. Share warrants to bearer or bearer shares

MORTGAGES AND DEBENTURES

48. Borrowing by companies
49. Issue of debentures
50. Trustees for debenture holders
51. Registration of charges
52. Transfers and transmission of debentures

RECEIVERS AND MANAGERS

53. Qualification
54. Powers and duties
55. Receiver appointed by Court
56. Receiver appointed out of Court
57. Liability of receiver
58. Notification of appointment
59. Accounts of receiver
60. Enforcement of receiver's duties

Section

OFFERS OF SECURITIES TO THE PUBLIC

61. Prospectuses and public offers

ANNUAL RETURNS, ACCOUNTS, AUDITORS AND DIVIDENDS

62. Annual returns
63. Accounts
64. Appointment and removal of auditors
65. Duties and powers of auditors
66. Dividends

ACTS BY OR ON BEHALF OF THE COMPANY

67. Functions of general meetings, directors and agents
68. Contracts
69. Seal of a company
-

MEETINGS AND RESOLUTIONS

70. Meetings
71. Notice of meetings
72. Service of notices
73. Circulation of members' resolution
74. Circulation of members' circulars
75. General provisions affecting sections 73 and 74
76. Power of Registrar to order a meeting
77. Requisition of meetings
78. Quorum
79. Chairman for meetings
80. Proxies
81. Corporations—representation at meetings
82. Resolutions and voting
83. Voting by joint holders
84. Votes by persons of unsound mind
85. Adjournment
86. Application to class meetings
87. Registration of resolutions
88. Minutes
89. Written resolutions

Section

DIRECTORS

- 90. Definition
- 91. Number and appointment
- 92. Directors' share qualifications
- 93. Removal and vacation of office of directors
- 94. Executive directors
- 95. Managing directors
- 96. Directors' remuneration
- 97. Loans to directors
- 98. Management agreements
- 99. Limitation on powers of directors
- 100. Conflicts of duty and interest
- 101. Duties of directors
- 102. Contracts in which directors are interested
- 103. Compensation for loss of office
- 104. Payments to directors in connection with take-over bids
- ~~105. Provisions supplemental to sections 103 and 104~~
- 106. Duties of director on sale or purchase of securities
- 107. Civil liability for breach of duty
- 108. Register of directors' interests
- 109. Alternate directors
- 110. Representative directors
- ~~111. Assignment of office~~
- 112. Proceedings of directors
- 113. Minutes of directors' meetings
- 114. The secretary
- 115. Register of directors and secretary
- 116. Registration of particulars of director and secretaries
- 117. Publication of names of directors and secretary
- 118. Disqualification of persons guilty of misconduct

PROTECTION AGAINST ILLEGAL OR OPPRESSIVE ACTION

- 119. Injunction or declaration in the event of illegal or irregular activity
- 120. Remedy against oppression
- 121. Enquiries by the Registrar
- 122. Appointment of Inspector
- 123. Expenses of investigation
- 124. Proceedings after investigations

Section

WINDING UP

- 125. Procedure and general provisions
- 126. Cancelling dissolution
- 127. Distribution without full winding up
- 128. Vesting order
- 129. Winding up by order of the Court (official winding up)

PART III

PRIVATE COMPANIES

- 130. Basic conditions
- 131. Directors
- 132. Transfer of shares
- 133. Written resolutions and meetings
- 134. Share capital
- 135. Auditors
- 136. Annual returns

PART IV

CONVERSION OF ONE TYPE OF COMPANY INTO ANOTHER TYPE OF COMPANY

- 137. Conversion of private company into a public company
- 138. Conversion of public company into a private company
- 139. Effect of change of status

PART V

PROVISIONS APPLICABLE TO NON-KIRIBATI COMPANIES

- 140. External companies

PART VI

SUPPLEMENTARY

- 141. Service of documents by company
- 142. Service of documents on company
- 143. Books and registers
- 144. Miscellaneous offences
- 145. Publication of capital to contain particulars of capital
- 146. Legal proceedings
- 147. Security for costs against a company

Section

- 148. Rights of contribution
- 149. Relief from liability
- 150. Companies formed for special purposes
- 151. Rules of Court
- 152. General authority of court

SCHEDULES

5 of 79

An Ordinance to regulate the conduct of business by companies; to provide for a companies register, the establishment of a companies registrar and for purposes connected therewith

Commencement:

PART I

PRELIMINARY AND OFFICIAL ADMINISTRATION

Short title
and com-
mencement

1. (1) This Ordinance may be cited as the Companies Ordinance, and shall come into operation on such date or dates as the Minister may by order provide.

(2) Different parts of this Ordinance may be brought into force on different dates.

Interpretation
Schedule 2

2. In this Ordinance unless the context otherwise requires the expressions defined in Schedule 2 have the meanings assigned to them in that Schedule.

Extent of
application of
the Ordinance

3. (1) Except where otherwise provided the provisions of this Ordinance shall apply to all companies registered or registrable in Kiribati whether before or after the commencement of this Ordinance, under any earlier Companies Ordinance or this Ordinance.

(2) The provisions of Part III apply to private companies, and the provisions of Part V apply to external companies.

(3) Nothing in this Ordinance shall affect the validity of anything done before the date on which this Ordinance comes into operation.

4. (1) No company, association, syndicate or partnership consisting of more than 20 persons shall be permitted or formed in Kiribati for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, syndicate or partnership or by the individual members thereof unless it is registered as a company under this Ordinance.

Limitation of partnerships etc.

(2) The provisions of subsection (1) shall not apply with reference to the formation by persons qualified to carry on any organised and recognised profession which is designated in any order made by the Minister under this Ordinance as an exempted profession, of any association, syndicate or partnership for the purpose of carrying on such exempted profession.

(3) The provisions of this Ordinance shall not apply to a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, and which is registered under the Co-operative Societies Ordinance, unless application for incorporation shall have been made to and accepted by the Registrar.

Cap. 14

5. (1) Subject to section 99 of the Constitution, there shall be a Registrar who shall be appointed by the Minister upon the recommendation of the Public Service Commission.

Registrar

(2) No liability shall attach to the Registrar in respect of any breach of a duty imposed on him by this Ordinance (other than in respect of any improper disclosure of information obtained confidentially) and no liability shall attach to the Republic for any such breach.

(3) In exercising any function under this Ordinance whereunder the Registrar may exercise a discretion in the interests of Kiribati the Registrar shall have regard to any directions from time to time given to him by the Minister but without prejudice to his right at any time to apply to the Court for directions as to the manner in which he should exercise his duties and functions under this Ordinance.

6. (1) The Registrar shall maintain a separate and distinct register in respect of every company incorporated under this Ordinance and in such register shall be placed all documents delivered to him in accordance with this Ordinance in respect of every such company and the Registrar shall maintain a like register in respect of every external company.

Maintenance of register for each company and filing of documents

(2) The regulations shall make provision for the inspection of the registers kept by the Registrar under this section and prescribe fees to be payable for such inspection and the supply by the

Registrar of copies of any documents registered in respect of any company.

(3) A copy of or extract from any document registered by the Registrar certified to be a true copy under the hand of the Registrar shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) All documents purporting to be orders, certificates, licences, approvals or revocations thereof made or issued by the Registrar for the purposes of this Ordinance, and purporting to be signed by him, shall be received in evidence as such without further proof of validity unless the contrary is shown.

(5) For the purposes of any provision of this Ordinance, no document or particulars shall be deemed to have been delivered to the Registrar for registration until the appropriate registration fee and any late fee has been paid to the Registrar.

(6) If the Registrar is of opinion that any documents or particulars delivered to him for registration—

- (a) contain matter contrary to law; or
- (b) by reason of any error, omission or misdescription have not been duly completed; or
- (c) otherwise do not comply with the requirements of this Ordinance; or
- (d) contain any error.

he may direct that the document or particulars be appropriately amended or completed and re-submitted and may refuse to register the document or particulars until appropriately amended or completed; and in that event the document or particulars shall not be deemed to have been delivered for registration until re-submitted appropriately amended or completed.

(7) If a body corporate or any officer or liquidator of a body corporate, having made default in complying with any provision of this Ordinance which requires it to deliver any return, account, or other document, or to give notice of any matter, fails to end the default within 28 days after the service of a notice on the body corporate or the officer or liquidator requiring it or him to do so, the Court may, on an application made to the Court by the Registrar or by any member or creditor of the body corporate, make an order directing the body corporate and any officer thereof or the liquidator to make good the default within such time as may be specified in the order; and may provide in addition to any penalty or late fee which may be imposed under this Ordinance that all costs of and incidental to the application shall be borne by the

body corporate or by any officer or liquidator of the body corporate responsible for the default.

7. (1) Without prejudice to any provision in this Ordinance whereby the failure to deliver any document to the Registrar for registration may affect the validity of the document or of the matter to which it relates, the Registrar shall only be empowered to accept any such document upon payment of a late fee which, save as regards the additional fee payable for late registration of a certified copy of a resolution under section 87 of this Ordinance, shall be calculated according to the following scale and shall be additional to the fee which may be prescribed for the registration of the document. Late filing fees

(2) If the document is lodged within the undermentioned periods after the last date on which it was required to be lodged the scale of fees payable is—

	Additional Fee
(a) One month	\$50
(b) Two months	\$100
(c) Three months	\$200
(d) Four months or more	\$500

and the directors of the company in default shall jointly and severally be liable to pay such late fee and shall have no right to be indemnified by the company in respect thereof.

8. The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations for the purpose of carrying this Ordinance into effect and for providing for the forms or fees to be prescribed or for any other matter which under this Ordinance is to be prescribed or which relate to any procedures under this Ordinance and the regulations may provide for a variation of any monetary limit specified in any section of this Ordinance. Regulations

PART II

FORMATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Provisions generally applicable

9. (1) Subject to the provisions of this Ordinance, application may be made to the Registrar by any person for any lawful purpose to incorporate a company under this Ordinance. Procedure for incorporation

(2) An application to incorporate a company under this Ordinance shall be delivered to the Registrar and shall be in such form and shall contain such particulars as may be prescribed and shall be accompanied by a remittance for all fees and other sums prescribed as payable in respect of the application, the Articles of the company and such other documents, duly subscribed, as are required to be delivered with such application under this Ordinance or any order or regulation made thereunder and such application shall be considered by the Registrar.

(3) Before reaching a decision upon any application for permission to incorporate a company the Registrar may require the incorporators to provide such further information relating to themselves or to the company or to other persons having an interest or intending to have an interest therein as the Registrar may specify and, unless satisfied with the information so provided, the Registrar shall without prejudice to his powers under subsection (5) refuse to proceed further with the application.

(4) Any information provided by or on behalf of the applicants shall be treated as confidential by the Registrar and all public officers having access thereto.

(5) The Registrar may, in his absolute discretion and without assigning any reason, decline to grant permission to incorporate a company under this Ordinance if he considers it is in the interest of Kiribati to so decline.

(6) If the Registrar is satisfied that on the information submitted to him pursuant to this section it is appropriate for the Registrar to consent to an application to incorporate a company under this Ordinance, a memorandum of consent on behalf of the Registrar shall be endorsed on the application if he is satisfied that it is in accordance with the Ordinance and that the name of the company is not undesirable and he shall enter the name of the company in the Register of Companies and shall issue a Certificate of Incorporation bearing the name of the company and the date of incorporation and the registered number of the company.

(7) From the date of incorporation specified in the Certificate of Incorporation the persons who have subscribed to the Articles as the proposed members of the company together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the Certificate of Incorporation capable forthwith of exercising all the functions of an incorporated company according to this Ordinance.

(8) No defect in the formalities leading to the incorporation of

a company or in any document submitted with the application for incorporation shall affect the validity of its incorporation and its Certificate of Incorporation shall be conclusive evidence of the due incorporation of the company and the date of its incorporation by registration.

(9) No person who is an infant or of unsound mind, or under any other disability from time to time imposed by or pursuant to this Ordinance or by or pursuant to any other law of Kiribati, shall be a subscriber, member, director or secretary of a company.

10. (1) A company may be formed and incorporated under this Ordinance provided it is a company limited by shares being a company in respect of which the liability of every member is limited to the amount paid up on each share of which he is the holder (in this Ordinance termed "a limited company").

Type of companies

(2) A limited company may be a public company or a private company.

~~11. (1) Any person who is or has been engaged or interested~~ in the formation of a company is a promoter of that company:

Duties of promoters

Provided that a person acting in a professional capacity for persons engaged in procuring the formation of the company shall not thereby be deemed to be a promoter.

(2) Until the formation of the company is complete the promoter stands in fiduciary relationship to the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by it by reason of his failure so to do.

(3) A promoter who acquires any property or information in circumstances in which it was his duty as a promoter to acquire it on behalf of the company shall account to the company for such property or information.

(4) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into by or ratified on behalf of the company—

- (a) if all the company's directors are independent of the promoter, by the board of directors; or
- (b) by all the members of the company; or
- (c) by the company at a general meeting at which neither the promoter nor the holder of any shares in which he is beneficially interested shall have voted on the resolution to enter into or ratify that transaction.

(5) No period of limitation shall apply to any proceedings brought by the company to enforce any of its rights under this section but in any such proceedings the Court may relieve a promoter in whole or in part, and on such terms as it thinks fit, from liability hereunder if in all the circumstances, including lapse of time, the Court thinks it equitable to do so.

Pre-
incorporation
contracts

12. (1) Any contract or other transaction purporting to be entered into by the company prior to its formation or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and in the case of 2 or more persons jointly and severally, and entitled to the benefit thereof.

Articles of
companies

13. (1) The Articles of every company shall be printed or in such other durable form as the Registrar shall approve and shall be divided into paragraphs, namely—

(a) Paragraph 1—the Name Section—which must state the precise name of the company with the abbreviation “LTD.” as the last suffix of the name.

(b) Paragraph 2—the Domicile Section—which must state that the registered office of the company is in Kiribati.

(c) Paragraph 3—the Objects Section—which shall either state the nature of the business initially to be carried on by the company and that the objects of the company are unrestricted, or shall specify the nature of the business initially to be carried on by the company and any other types of business which the company is to be authorised to carry on or any restrictions attached to the objects of the company or types of business to be carried on by the company and shall further state that the company shall by virtue of this Ordinance be deemed to have all the lawful powers of a natural person requisite for the furtherance of its unrestricted or specified objects or businesses save as the Articles shall in the Objects Section otherwise specifically provide:

Provided that no company shall be entitled to carry on or to state in its Objects Section that it is to be entitled to carry on the business of banking or insurance, or such other business as may from time to time be prescribed as requiring a licence of the Minister, save with the sanction of the Registrar evidenced by the issue of a licence.

- (d) Paragraph 4—the Capital Section—which must state the amount of the authorised share capital and its division into shares of fixed amount or if the company is to have shares of no par value that the capital is divided into a specified number of shares of no fixed amount or such Section may provide for a combination of shares of fixed amount and shares of no par value:

Provided that all the shares of the same class shall consist of shares of fixed amount or of shares of no par value.

- (e) Paragraph 5—the Share Rights Section—which must state either that all shares of the company rank equally in every respect or, if the share capital consists of shares conferring any special or particular rights or consists of more than one class of shares, must state any special or particular rights or restrictions as to voting, dividends, participation in assets on a winding up, transferability or appointment of directors attaching to any shares or to any class of shares.

- (f) Paragraph 6—the Officers Section—which must state the names of the directors, the secretary and the auditors of the company (if any) and, in the case of a public company, that the powers of the directors are limited in accordance with section 99.

- (g) Paragraph 7—the Rules Section—which must state the rules as to membership and provide for the administration and internal constitution of the company.

- (h) Paragraphs 3, 5, 6 and 7 of the Articles may be subdivided into 2 or more subsections.

(2) The Articles must be signed at the end thereof by each of the persons named in the Articles as directors and secretary and the incorporators or the duly appointed attorneys of any such persons.

14. (1) No company shall be registered by, or change its name to, a name which in the opinion of the Registrar is misleading or undesirable. The name of a company

(2) A company may by special resolution, and with the approval of the Registrar signified in writing, change its name.

(3) If through inadvertence or otherwise a company on its first registration, or on the registration by a new name, is registered by a name which in the opinion of the Registrar is misleading or undesirable the company shall, if directed by the Registrar within 6 months of its being registered by that name, change its name to a name approved by the Registrar within 6 weeks from the date of the direction made by the Registrar.

(4) At any time within 12 months of the coming into operation of this Ordinance the Registrar may direct any company to change its name if, in his opinion, such name is misleading or undesirable and the company shall so change its name within 6 weeks of such direction unless within 14 days of such direction it shall have lodged an appeal to the Court against such direction.

(5) If the Registrar is of the opinion that by reason of any change in the objects of or the nature of the business carried on by a company, or of any change in membership of the company, the name under which it is registered is misleading or undesirable, the Registrar may direct the company to change its name to a name approved by the Registrar and the company shall so change its name within 6 weeks of such direction unless, within 14 days of such direction, it shall have lodged an appeal to the Court against such direction.

(6) For the purpose of enabling the Registrar to determine whether or not he shall make such a direction as is specified in subsections (3), (4) and (5) the directors of every company, including an existing company, shall furnish the Registrar with such information as he may from time to time require.

(7) The Court shall on the hearing of such appeal as is referred to in subsections (4) and (5) make such order as it thinks proper and, if the Court shall order the company to change its name, the company shall change its name to a new name approved by the Registrar within 6 weeks of the date of the order of the Court.

(8) If default is made in complying with any direction made by the Registrar or the Court under this section the Registrar shall, at the expiration of the period of 6 weeks of any such direction or order being made, save where an appeal has been made to the Court as provided in subsection (4) or (5), declare the company dissolved and the assets of the company shall vest in a Custodian Manager who shall deal with the same and with the affairs of the company as if a Protection Order had been made in respect of the company pursuant to section 25 and the directors of the company shall be jointly and severally liable for the expenses incurred by the Custodian Manager in administering the affairs of the company to such extent as the Court shall consider reasonable.

(9) A change of name of a company shall not affect 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 against it by its former name may be continued or commenced against it by its new name, and for a period of 6 months after any such change of name has been effected wherever the new name of the company is used there shall also appear a reference to its former name.

(10) The Registrar on written application, and on payment of the prescribed fee, may reserve a name which has been approved by him pending registration of a company or a change of name by a company. Such reservation shall be for a period not exceeding 3 months and, during the period of reservation, no other company shall be registered under the reserved name or under any other name which in the opinion of the Registrar is similar to the reserved name.

(11) Where a company changes its name the Registrar shall enter the new name in the Register of Companies and shall replace the Certificate of Incorporation with a new Certificate of Incorporation altered to record the change of name and the change of name shall take effect from the date recorded in such new Certificate of Incorporation.

(12) Within 7 days of the issue by the Registrar of the new Certificate of Incorporation the Registrar shall advertise in the *Gazette* and in the "Atoll Pioneer" details of the change of name.

15. (1) Every company shall—

- (a) display its name in prominent manner on the outside of, or in the entrance hall of, its registered office, and every place in which its business is carried on, in letters easily legible; and
- (b) have its name and registered number engraved in legible characters on its seal, if any; and
- (c) save as provided by subsection (4), have its name and registered number accurately mentioned in legible characters at the head of all business letters, order forms, invoices, receipts, notices, advertisements, or other publications of the company, and in all negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company, and also refer to its incorporation in Kiribati and its registered office or post office box number:

Publication
and use of the
name of the
company

Provided that paragraph (a) shall be deemed to be complied with as regards display of the name of a company at its registered

office if, at the office or place which is its registered office, such office or place is the registered office of more than one company and there is available for public inspection during the normal business hours at its registered office a register listing every company which has its registered office at such address and there is designated in its notice of registered office delivered to the Registrar the name of an individual, firm or company having an office at such address who has custody of such register to whom application should be made for such inspection and there is displayed on the outside of, or in the entrance hall of, every such office a plaque or sign indicating that a register of registered offices is available for inspection at such office.

(2) No company shall carry on business in a business name other than its full corporate name unless it shall have first obtained the approval of the Registrar to the use of such business name and shall have delivered to the Registrar such information as he may require.

(3) The Registrar may in his absolute discretion and without assigning any reason decline to approve the use by a company of any business name other than its corporate name, and the provision of section 14 (5) to (8) (inclusive) shall *mutatis mutandis* apply in relation to the use by a company (including an existing company) of a business name.

(4) Where a company with the approval of the Registrar uses a business name other than its corporate name it shall display in prominent manner on any publications mentioned in subsection (1) (c) (save only as regards advertisements which do not contain an order form) in which such business name appears reference to the company in its corporate name (and with its registration number and reference to its incorporation in Kiribati) as being the proprietor of the business name.

(5) Where a company ceases to use a business name it shall within 7 days after such cessation notify the Registrar.

(6) Where any company contravenes the provisions of this section the Registrar may give notice to the company of its default and if the company shall continue in default after the expiration of the period specified in such notice the Registrar may forthwith declare the company dissolved, and the same results shall follow as in the case of a company declared dissolved pursuant to section 14 (8).

(7) Save as regards the particulars of the name of the company required to be engraved on its common seal, if any, the abbreviation "Co." may be used for the word "Company" in the name of

a company, and the ampersand "&" may be used for the word "and" in the name of a company, but any other abbreviations in the name of a company shall be deemed to constitute a business name requiring registration under subsection (2).

(8) In addition to the powers conferred on the Registrar by subsection (6), if any director or officer of a company or any person on its behalf—

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name and registered number is not so engraven as aforesaid; or
- (b) issues or authorises the issue of any notice of other official publication of the company or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money, goods or services, wherein its name and registered number and the fact of its incorporation in Kiribati is not mentioned in manner aforesaid; or
- (c) issues or authorises the issue of any letter, delivery note, invoice, receipt or letter of credit of the company or advertisement wherein its name and registered number and the fact of its incorporation in Kiribati and the address of its registered office or post office box number is not mentioned in manner aforesaid,

he shall be guilty of an offence and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money, goods or services for the amount of value thereof unless such bill, promissory note, cheque or order for money is paid or the goods or services are provided by the company.

(9) In addition to the provisions of subsections (6) and (8), where any offence is committed under this section the company and every director, officer or other person in default shall be liable to a default fine for each day on which the offence is shown to have been committed.

(10) Any person or persons trading or carrying on business under a name or title which implies that the person or persons is or are duly incorporated under this Ordinance, or any repealed Ordinance relating to the incorporation of companies, shall be liable to a fine of \$1,000 if not thus incorporated, and the Court may direct that in addition the person or persons who have so offended shall be prohibited from being members or directors of any company registered or to be registered under this Ordinance or of any existing company for such period as the Court may think proper, and where any such person is a director or member of any

then existing company the Court may make such order as it thinks fit in relation to any such directorship or membership with power to order that any shares of such member in any existing company shall be forfeited to the Republic.

(11) In the case of an existing company the requirement as to the engraving of its registered number on its seal need not be complied with until the expiration of 1 year after the date of commencement of this Ordinance if the document to which the seal is affixed where it refers to the name of the company also refers to its registered number.

Registered
office

16. (1) Every company shall have in Kiribati and shall notify the Registrar of an office to which all communications and notices may be addressed and at which all process may be served and at which the statutory registers shall be kept and be available for inspection in accordance with this Ordinance, and such office shall be known as the registered office of the company and shall be open for receipt of communications or notices or service and inspection of the statutory registers during the usual business hours on each working day of every year:

Provided that, in addition to the address of the office at which the statutory registers are kept, the company may have a post office box number to which all communications and notices may be addressed, and particulars of such post office box number shall be included in the particulars required to be delivered to the Registrar.

(2) Any change in the registered office of a company may only be effected by resolution of the directors and any such resolution shall take effect only on completion of the registration of particulars of the change at the Companies Registry in the prescribed form.

(3) Where any such registered office is the address of a person, firm or company to whom the company has given custody of its statutory registers and on whom process may be served any notice or other document publicising such address shall specify the person, firm or company having such custody as aforesaid, and particulars of such person, firm or company shall be included in the details of the registered office delivered to the Registrar.

(4) Any notice, order or other document which by this Ordinance or any other Ordinance or by any rule of the Court may be or is required to be served upon any company, including an external company, may be served by delivering it at or sending it to the address of its registered office or the address so recorded of the person, firm or company on whom process may be served

recorded at the Companies Registry, and the service on a company at the address or post office box number so recorded on the file of the company at the Companies Registry shall be effective, even though such address is not its registered office or the address of the registered office has been changed, and the sending of any notice, order or other document to any post office box number recorded on the file of the company in the particulars delivered of its registered office shall be effective service of such notice, order or other document.

17. (1) If a company by its Articles states that its objects are unrestricted it shall have authority to carry on any lawful business and, except to the extent that the company's Articles or the provisions of this Ordinance otherwise specifically provide, every company shall have, for furtherance of its objects and of any duly authorised business carried on by it, all the powers and discretions of a natural person of full capacity.

Objects and
powers of
companies

(2) As regards any person dealing with the company (not being a member of the company) any act of a company and any conveyance or transfer of property to or by a company shall not be invalid by reason only of the fact that such act, conveyance or transfer was not made for the furtherance of any of the authorised businesses of the company in the Objects Section of its Articles or that the company was otherwise exceeding its objects or powers.

(3) On the application of—

- (a) any member of a private company, or members of a public company holding not less than 5 per cent of the issued share capital, or where the company has more than one class of share capital not less than 5 per cent of the issued shares of any class; or
- (b) any holder of any debenture secured by a floating charge over all or any of the company's property, or by the trustee for the holders of any such debentures,

the Court may prohibit by injunction the doing of any act or the conveyance or transfer of any property if the Court is satisfied that any act or conveyance or transfer is in contravention of the specified objects of the company or is in excess of its powers or may make such other order as it thinks proper.

(4) If the transactions sought to be prohibited in any proceedings under subsection (3) are being or are to be performed or made pursuant to a contract to which the company is a party, the Court, if it deems the same to be equitable and if all the parties to the contract are parties to the proceedings, may set aside and prohibit the performance of such contract and may allow to the

company or to the other parties to the contract compensation for any loss or damage sustained by reason of the setting aside and prohibition of the performance of such contract but not compensation for loss of anticipated profits to be derived from the performance of such contract.

(5) Where any compensation is awarded pursuant to subsection (4) the directors of the company at the date of such contract shall be jointly and severally liable for payment of such compensation, unless the Court having regard to the circumstances and in its absolute discretion directs that such compensation be paid in whole or in part out of the funds or other assets of the company.

Alteration of
objects

18. (1) A company may by special resolution alter its Articles with respect to its unrestricted or specified objects:

Provided that, if an application is made to the Court in accordance with this section for the alteration to be annulled, the alteration shall not have effect except in so far as it is confirmed by the Court.

(2) Within 21 days of the passing of any such resolution application may be made to the Court for an order annulling the resolution by—

- (a) any member of a private company or, in the case of a public company, by the holders of not less than 5 per cent in the aggregate of the company's issued shares or any class thereof; or
- (b) by the trustees for holders of any debentures secured by a floating charge over all or any of the company's property; or
- (c) the holder of any debenture secured by a floating charge over all or any of the company's property.

(3) Where any application is made to the Court pursuant to subsection (2) a copy of such application shall be delivered to the Registrar and to the company at the same time as the application is lodged with the Registrar of the Court.

(4) The application to the Court pursuant to subsection (2) shall be signed by the applicant or applicants, shall contain such information about the company's share or loan capital as makes it apparent that the applicant or applicants are duly qualified to make the application, and shall also state the reasons for objection to the passing of the resolution, and if the application is made by a member who voted in favour of the special resolution the application shall state his reasons why he no longer consents to the passing of the special resolution.

(5) On an application under this section the Court may make an order confirming the alteration in whole or in part and on such terms and conditions as it thinks fit and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentients, and may give such directions and make such orders as it may think expedient for facilitating and carrying into effect any such arrangement. If the Court shall refuse to confirm the alteration in whole or in part it shall make an order annulling the alteration.

(6) A copy of the order of the Court made pursuant to subsection (5) shall be delivered to the Registrar and placed on the official file of the company.

(7) If no application is made to the Court pursuant to this section a special resolution altering the Articles of a company as provided in subsection (1) shall take effect at the expiration of the said period of 21 days or, in the case of a private company, shall take effect on the registration of the special resolution if there be delivered with a copy of such resolution the consents in writing of each member and any holder of debentures conferring a floating charge or of trustees for such holders.

(8) If an application is made to the Court pursuant to this section the Court in making any order of total or partial confirmation shall specify in such order the date on which the alteration is to become effective.

(9) Where it is shown to the satisfaction of the Court that any person, including the company, has suffered any loss or damage in consequence of any transaction entered into by the company in reliance of authority conferred on the company by the passing of a special resolution which is annulled or partially confirmed pursuant to subsection (5) the directors of the company at the date on which such transaction is first entered into shall be jointly and severally liable for such loss or damage unless the Court shall direct that any such loss or damage shall be discharged in whole or in part out of the funds or other assets of the company.

19. (1) In the case of a company registered after the commencement of this Ordinance, for the purposes of compliance with section 13 (1) (h) as to paragraph 7 of the Articles of a company the form of the Rules Section of the Articles of—

Form of
Rules forming
part of
the Articles
of a company

(a) a public limited company; and

(b) a private limited company,

shall be respectively in accordance substantially with the forms

Schedule 1 set out in Table A and Table B in Schedule 1 to this Ordinance, or as near thereto as circumstances may admit.

(2) The Articles may as regards the Rules Section thereof (namely paragraph 7) adopt by reference such of the provisions of the appropriate Table as are not required to be specifically stated in the Articles, and in so far as the Articles do not specifically replace or modify those provisions the said provisions of the relevant Table shall so far as applicable be part of the Articles of the company and paragraph 7 of the Articles delivered to the Registrar shall so state.

(3) The Rules shall be printed or in some other legible and durable form acceptable to the Registrar.

(4) Every existing company shall, within 2 years of the commencement of this Ordinance, by special resolution adopt in place of and in substitution for its existing Memorandum and Articles, Articles in the form prescribed by section 13 adapted as near thereto to meet the circumstances of the company and in default, at the expiration of the said period of 2 years, the Registrar may at any time thereafter, upon not less than 3 months' notice in writing to the company, declare the company dissolved, and the same results shall follow as in the case of a company declared dissolved pursuant to section 14 (8).

(5) Pending the adoption by an existing company of Articles as provided by subsection (4) any reference in this Ordinance to the Articles of a company shall, in the case of an existing company, be deemed to refer to its Memorandum and Articles of Association and to the appropriate clauses therein which correspond to the Articles referred to in section 13, with the addition that, within 15 days of the date of the commencement of this Ordinance, an existing company if it has not done so shall give to the Registrar in the prescribed form details of its registered office and particulars of its directors, secretary and auditor, if any, and in default the company shall be dissolved at the expiration of the said period of 15 days in similar manner to dissolution under section 14 (8).

(6) Where the Articles of any company adopt by reference any of the provisions of the relevant Table set out in Schedule 1 an official printed copy of such Table shall be attached to every copy of the Articles issued by the company.

(7) On admission of a person to membership of a private company the company shall provide him with a copy of the Articles of the company free of any charge and on the occasion of any change in any of the Articles of a private company the company

shall send to each of its members free of any charge a true copy of the resolution effecting such change, or if complete new Articles or Rules are adopted a copy of such new Articles or Rules. If any member of a public company requires a copy of the Articles of the company or any alterations thereto, or if any member of a private company requires additional copies of the Articles of the company or any alteration thereto, he shall be entitled to obtain the same from the company on payment of such charge as the auditors of the company shall certify represent the appropriate cost for printing such copy but so that any company may provide such copy or additional copy free of charge.

(8) The Articles when registered shall have the effect of a contract between the company and its members and officers and between the members and officers themselves whereby they respectively agree to observe and perform and be bound by the provisions of the Articles, as duly altered from time to time, in so far as they relate to the company, its members or officers as such.

(9) Where the Articles empower any person to appoint or remove any director or other officer of the company such power shall be enforceable by that person notwithstanding that he is not a member of the company.

(10) In any action by a member or officer to enforce any obligation owed under the Articles to him and any other member or officer such member or officer shall, if any other member or officer is affected by the alleged breach of such obligation, sue in a representative capacity on behalf of himself and all other members or officers who may be affected, other than any who are defendants, and the result of such action shall bind all such other members or officers.

20. A company may by special resolution alter or add to its Articles or adopt new Articles: Alteration of Articles

Provided that—

- (a) the name of the company shall not be altered except with the consent of the Registrar in accordance with section 14; and
- (b) the registered office of the company shall not be altered except by following the procedure specified in section 16; and
- (c) the objects may only be altered or added to or replaced by a new paragraph by adopting the procedure specified in section 18; and

- (d) the capital may be altered only in manner provided by section 42; and
- (e) any changes in the officers of the company specified in paragraph 6 of the Articles may only be effected in manner provided by the Articles of the company or this Ordinance; and
- (f) where the share capital of the company consists of shares of different classes the rights attached to any class may be altered in manner provided by section 33 and not otherwise; and
- (g) no alteration may be made to the Articles of a company which result in the omission from the Articles of any provision which under this Ordinance is required to be stated in the Articles and no new Articles may be adopted unless they contain all matters which under this Ordinance are required to be stated in the Articles; and
- (h) no member of the company shall be bound by an alteration made in the Articles after the date on which he becomes a member if and so far as the alteration requires him to acquire more shares than the number of shares held by him on the date on which the alteration is made or in any way obliges him to pay money or transfer property to the company or which increases or imposes restrictions on the right to transfer the shares held by him at the date of the alteration, unless he agrees in writing either before or after the alteration is made to be bound thereby; and
- (i) no alteration shall be made which would have the effect of converting a company of one kind into a company of a different kind save by adopting the procedure specified in sections 136 and 137; and
- (j) any alteration may be restrained or cancelled by the Court in accordance with section 118.

Minimum
paid up share
capital

21. (1) The minimum paid up share capital of the types of companies incorporated under this Ordinance shall be as follows:—

- (a) public limited company \$20,000
- (b) private limited company \$500.

(2) If the annual accounts of a company disclose that the minimum paid up share capital of a company is not fully represented by assets (other than goodwill) the company shall within 3 months thereafter issue sufficient share capital to restore the paid up capital to the relevant minimum paid up capital and in

default the directors of the company shall be jointly and severally liable for all debts and obligations of the company incurred since the date up to which the said accounts are made up.

22. (1) A company registered after the commencement of this Ordinance may commence business immediately on the issue of the Certificate of Incorporation.

Commencement
and continua-
tion of busi-
ness

(2) An existing company having a share capital may not continue in business after the expiration of 6 months from the commencement of this Ordinance, unless there has been delivered to the Registrar a certificate signed by the auditors (if any) and each director of the company to the effect that the paid up share capital is at the date of such certificate not less than the prescribed minimum share capital and that such share capital is fully represented by assets of the company (excluding goodwill).

(3) If an existing company makes default in delivering a certificate pursuant to subsection (2), upon the expiration of the said period of 6 months the company shall be dissolved and the same results shall follow as if an order had been made against the company pursuant to section 14 (8).

(4) If a certificate is duly delivered to the Registrar pursuant to subsection (2) or on any application to incorporate a company under this Ordinance and a Protection Order is made against the company within 12 months of the date on which such certificate was so delivered, the directors of the company throughout the period from the commencement of this Ordinance or the incorporation of the company, in the case of a company which is not an existing company, to the date of the Protection Order shall be jointly and severally liable for all the liabilities of the company outstanding at the date of the Protection Order if the Court, on application being made by the Registrar, is satisfied that such certificate was not correct, unless the Court having regard to all relevant circumstances shall consider it appropriate to grant relief.

23. (1) The subscribers to the Articles as incorporators of the company shall be deemed to be members of the company and on its registration shall be entered as members in the register of members of the company.

Membership
of companies

(2) Every other person who agrees with the company to become a member of the company and whose name is entered in the register of members shall be a member of the company.

(3) Every member shall have such rights, duties and liabilities

as are by this Ordinance and the Articles of the company conferred and imposed upon members.

(4) Every member shall be a shareholder of the company and shall hold at least 1 share, and every holder of a share shall be a member of the company.

(5) Membership of a company shall continue until a valid transfer of all the shares held by the member is registered by the company, or until all such shares are transmitted by operation of law to another person or forfeited or cancelled under a provision in this Ordinance or in the Articles or until the member dies when the rights and obligations attached to membership shall attach to his estate.

Register of
members

24. (1) Every company shall keep at its registered office a register of members in which shall be entered the following particulars:—

- (a) the names and residential or corporate addresses or post office box number of each member; and
- (b) particulars of the number of shares acquired by each member and details of the consideration received by the company for such shares; and
- (c) the date on which the particulars in respect of each member were entered in the register of members; and
- (d) the date on which any person ceased to be a member with a notification of the reasons for such cessation of membership.

(2) Where a company has more than 20 members the register shall contain an index of the names of members in such a form as to enable each member to be readily ascertained.

(3) Before entry into the register of members of particulars of membership the directors of the company shall be personally responsible for satisfying themselves that the company shall have received all moneys or other consideration payable to or receivable by the company as a condition precedent to admission to membership.

(4) The register of members shall be open to inspection by any member of the company or the Registrar without charge, or to any other person on payment of such fee as may be prescribed, during the usual business hours save where the register of a public company is closed as provided in subsection (8).

(5) Any member or other person who is entitled to inspect the register of members may require a copy of the register or any part

thereof on payment of such fee as may be prescribed and any such copy shall be supplied by the company within 10 days of any such request being received by the company and such copy shall include all particulars recorded in the register on the date on which the copy is so supplied.

(6) If any inspection under this section is refused, or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company in default shall be liable to a default fine.

(7) In addition to payment of any fine pursuant to subsection (6), the Court may by order compel an immediate production of the register and delivery of copies under penalty of sentence by the Court for contempt of Court and order the company to be officially wound up.

(8) A public company may, on giving notice by advertisement in the *Gazette* and in the "Atoll Pioneer", or such other newspaper as the Registrar having regard to the membership of the company directs, close the register of members, or that part thereof relating to any class of members, for any time or times not exceeding 14 days on any one occasion or not exceeding in the whole 30 days in each year.

(9) If—

(a) the name of any person is without sufficient cause entered in or omitted from the register of members, or

(b) default is made in entering in the register any of the particulars required under this section,

the person aggrieved or any member of the company or the directors may apply to the Registrar for an order for rectification of the register.

(10) Where any order is made by the Registrar for rectification the Registrar may order the company or the officer who is in default to compensate the party aggrieved for any loss sustained.

(11) On any application under this section the Registrar may decide any question necessary or expedient to be decided for rectification of the register.

(12) The directors may without application to the Registrar at any time rectify any error or omission but such rectification shall only be made with consent of the parties affected thereby.

(13) The register of members shall be *prima facie* evidence of any matters by this Ordinance directed or authorised to be recorded therein.

Companies
ceasing to
have mem-
bers

25. (1) If at any time a public company ceases to have less than 10 members or a private company ceases to have at least 2 members and it carries on business for more than 3 months without at least 10 members or 2 members (as the case may be), unless in the case of a public company it is duly converted into a private company within such period, every person who is a director or member of such company during the time that it so carries on business after the expiration of the said period of 3 months shall be jointly and severally liable for the payment of all debts and liabilities of the company incurred after the expiration of the said period, and the Registrar may at any time after the expiration of the said period of 3 months make a Protection Order against the company unless the company's membership is restored to its appropriate minimum number prior to the making of the Protection Order.

(2) Where a Protection Order is made against the company the Registrar shall appoint a Custodian Manager of the company to manage the affairs of the company and the powers of the directors of the company shall thereupon cease and all the assets of the company shall thereupon vest in the Custodian Manager, who may continue all or any of the businesses carried on by the company with a view to the sale of the company as a going concern or, in his absolute discretion, may on behalf of the company pass a resolution to wind up the company and dispose of its assets, and in either case any assets remaining after satisfaction of all liabilities (other than share capital) shall be transferred to the Republic for its benefit and any interest of shareholders therein (or any person claiming through a shareholder) shall be forfeited to the Republic unless the Court, on application made to it by any person who satisfies the Court that he has a proper claim thereto and that he in no manner contributed to the default, shall order the transfer to such person of all or part of such assets on such terms as it may think proper including retention of part of such assets to compensate the Republic for its custodian management of the company.

(3) Where a Protection Order has been made pursuant to this section the Custodian Manager may execute transfers of all the shares of the company to give effect to the sale of the company as a going concern and upon such transfers being completed the Protection Order shall cease and the proceeds of sale shall be dealt with in a similar manner to the disposal of surplus assets on a winding up under the provisions of subsection (2) of this section.

(4) Where a Protection Order has been made against a company those persons who were directors of the company at any

time during the period when membership of the company was reduced below the minimum number stated in subsection (1) shall account to the Custodian Manager in respect of all their acts as directors of the company and their conduct of the company's business.

(5) Where membership of a company has been reduced below the said minimum number, not later than 2 months after the happening of the event which caused such reduction the directors of the company shall notify the Registrar of the fact that membership has been so reduced, unless membership has been restored to the said minimum number, and in default the liability of the directors for the debts of the company as provided in subsection (1) shall extend to all debts incurred by the company after the date on which membership was so reduced.

(6) For the purpose of this section a deceased person shall be deemed to be a member until the legal personal representatives of the deceased themselves become members in respect of his shares or transfer the shares to some other person and where a number of persons hold shares as joint holders membership of the company shall be counted per capita and not by reference to groups of shareholdings.

(7) The Registrar may at any time prior to the passing of any resolution by the Custodian Manager to wind up the company pursuant to subsection (2) revoke the Protection Order if he is satisfied that the company's membership has been restored to the said minimum number, and for this purpose the Registrar shall authorise the Custodian Manager to take all necessary steps to ensure that upon such restoration effective management of the company is appointed with provision for the members of the company to confirm such appointments or to substitute new management.

26. (1) Where a company has sent a notice prominently marked to a member to the address of such member as shown in the register of members requiring such member to confirm that such address is correct and such notice is either returned by the Post Office as undelivered or no reply is received to such notice within 3 months after its despatch, the directors of the company may resolve that the shares in the company held by such member shall be cancelled and such resolution shall take effect at the expiration of 14 days after notice thereof has been published by the company in the *Gazette* and in the "Atoll Pioneer".

Missing
members

(2) Upon any cancellation of shares of a missing member pursuant to this section the share capital of the company shall be

reduced and details of the reduction shall be delivered to the Registrar in the prescribed form and the amount certified by the auditors of the company (or if the company has no auditor by an accountant in Kiribati qualified for appointment as auditor of the company) shall be paid by the company to its bankers into a separate deposit account in the name of the company for the benefit of the missing member.

(3) If any person shall satisfy the Registrar that he is the person entitled to the benefit of the moneys deposited under the provisions of subsection (2) the Registrar shall authorise in writing the said bankers to release the sums then standing to the credit of the said deposit account:

Provided that no claim to any such deposit account may be made after the expiration of 6 years from its creation and at the expiration of such period the said bankers shall pay the sums then standing to the credit of the said deposit account to the Registrar for the benefit of the Republic.

SHARES AND SHARE CAPITAL

Nature of
shares and
transfer of
shares

27. (1) The rights and liabilities attaching to a share in a company shall be determined by the terms of issue and of the Articles of the company as amended from time to time so far as they are consistent with this Ordinance.

(2) Shares in a company shall be deemed for all purposes to be movable or personal estate transferable by instrument in writing in common form under the hand of the transferor and naming the transferee, save that a bearer share shall be a negotiable instrument transferable by delivery as provided in section 46, and any person who is entitled to a share by operation of law may have his right to the share recorded in the register of members on production to the company of the order of the court or other official evidence of title which vests him with the title of the original holder of the share and any person so entitled may execute a transfer of the share notwithstanding that he is not entered in the register of members as the holder of the share subject to any provision in the Rules of a company restricting or regulating the right to transfer a share.

(3) The beneficial ownership of a share shall pass to the transferee on the delivery to him of the transfer signed by the transferor together with the transferor's share certificate or on the delivery to him of a certificated transfer pursuant to section 28.

(4) Notwithstanding the provisions of subsection (2), no notice of any trust, express, implied or constructive shall be required to be entered on the register of members and, subject as herein provided, the company shall not be bound by or be compelled in any way to recognise any other rights in respect of a share except the absolute right to entire ownership thereof of the registered holder:

Provided that the company shall be bound to comply with the provisions of subsection (11) as to receipt of notice of a mortgage, charge or pledge of any of the shares of the company and the company may, with the consent of the shareholder, note on the register of members any capacity in which the shareholder is the holder of the shares.

(5) The Articles of a private company shall restrict the right of a member to transfer his shares but, save as in this section provided, shares in a public company shall be freely transferable and any provision in the Articles of a public company which purports to restrict the transfer of its shares shall be void:

Provided that the Registrar may specifically consent in writing to any restriction on transfers of shares of a public company.

(6) Notwithstanding the provisions of subsection (5), no share shall be transferred to any person who at the date of the transfer is an infant or to any person who at such date is a person found by the Court to be of unsound mind or to a person who under this Ordinance or any other law is prohibited from being a member of a company.

(7) Notwithstanding any provisions contained in the Articles of a company, and save where a transfer of a share arises by way of operation of law, it shall not be lawful for any company to register a transfer of its shares unless an instrument of transfer duly executed and stamped (if chargeable to duty) has been delivered to the company, and every officer of a company who has assented to the registration of a transfer in contravention of this provision shall be liable on conviction to a fine not exceeding \$1,000.

(8) Transfers may be lodged for registration by the transferor or the transferee, and if the company refuses to register a transfer it must notify the person lodging the transfer of its refusal within 28 days after lodgement of the transfer and deliver to such person a statement in writing setting out the facts which it considers justify its refusal.

(9) If default is made in complying with subsection (8) every officer of the company in default shall be liable to a fine not

exceeding \$1,000 and any transferee named in a transfer registration of which has been refused or in respect of which default under this section has been made may apply to the Registrar to order the company to register the transfer to him and the Registrar may make such order as to registration as he thinks proper and such order shall be deemed to be an order of the Court.

(10) If the Registrar pursuant to subsection (9) makes an order requiring the company to register a transfer the company shall comply with such order within 14 days of delivery by the Registrar to the company of a copy of the order, and if the company shall fail to comply with such order every officer of the company (other than an officer who proves that he did not assent to the failure) shall be liable to a fine not exceeding \$5,000.

(11) Any person who is interested in any share as mortgagee, chargee or pledgee may protect his interest by serving on the company concerned a notice confirming that the certificate for the share is in the possession of such person, and setting out the extent and term of the interest of such person.

(12) Notwithstanding the provisions of subsection (4), the company shall enter a note of the interest of any person who has served the company with a notice under subsection (11) in the register of members and, during the currency of such notice, no transfer of any share affected by such notice shall be registered without the consent of the person named in such notice as being entitled to protect his interest, and if any transfer is registered in contravention of this section the directors of the company shall be liable jointly and severally to compensate the person affected by such registration.

(13) Where a person who has served the company with a notice pursuant to subsection (11) ceases to be entitled to protect his interest in a share he shall notify the company of the cessation of his interest and the entry thereof shall be deleted from the register of members and in default of any such notification the holder of the shares concerned may apply to the Registrar to make an order authorising the company to make such deletion, and the company shall act on any order so made by the Registrar upon his being satisfied that the interest of the person who served the notice has ceased.

(14) Notwithstanding the foregoing provisions, the regulations may provide that shares, or the beneficial ownership of shares, of companies generally or any particular class or type of companies or of companies carrying on such class of business as shall be prescribed shall not be transferable unless the transfer is executed by the transferee and is accompanied by such statutory declara-

tions containing such information on such matters as are prescribed and that such declarations shall be registered with the Registrar, or that any such shares shall only be transferable with the consent of the Minister, and any transfer or arrangement made to transfer beneficial ownership of any share of a company made in contravention of this section shall be void and each of the directors of the company who consented to the transfer shall be liable to a fine not exceeding \$10,000.

(15) In the case of the death of a shareholder or debenture holder the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder or last survivor of joint holders, shall be the only persons recognised by the company as shareholders or debenture holders.

(16) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law may, upon such evidence being produced as the company may properly require, ~~be registered as the holder of the share or debenture or transfer the same to some other person and such transfer shall be as valid as if he had been registered as a holder at the time of execution of the transfer:~~

Provided that the company shall have the same right (if any) to decline registration of a transfer by such person as it would have ~~had in the case of a transfer by the registered holder but shall have no right to refuse registration of the person himself.~~

(17) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law shall, prior to registration of himself or a transferee, be entitled to the same dividends, interest and other advantages as if he were the registered holder and, in the case of a share, the same rights and remedies as if he were a member of the company, except that he shall not, before being registered as a member in respect of the share, be entitled to attend and vote at any meeting of the company:

Provided that—

- (a) the company may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture and if the notice is not complied with within 90 days the company may thereafter suspend payment of all dividends, interest or other moneys payable in respect of the share or debenture until the requirements of the notice have been complied with; and

- (b) the administrator of the estate of the deceased holder may exercise the voting rights formerly exercisable by the deceased on delivering to the company in the form prescribed a certificate as to his capacity to vote under this section.

Certification
of transfers

28. (1) When the holder of any shares or of debenture stock wishes to transfer to any person part only of the shares or stock represented by 1 or more certificates, the instrument of transfer together with the relative certificates may be delivered to the company or to the registration officer of the company with a request to certificate the instrument of transfer.

(2) If a company or its registration officer endorses on an instrument of transfer the words "certificate lodged", or words to the like effect, this shall be taken as a representation to anyone acting on the faith of the certification that there has been produced to, and retained by, the company or the registration officer such certificates as show a *prima facie* title to the shares or stock in the transferor named in the instrument of transfer but not as a representation that the certificates are genuine or that the transferor has any title to the shares of stock.

(3) Where any person acts on the faith of a false certification made by the company, the company shall be liable to compensate such person for any loss suffered as a result of so acting.

(4) Where any person acts on the faith of a false certification made by the registration officer, the company and the registration officer shall be jointly and severally liable to compensate such person for any loss suffered as a result of so acting but the company shall be entitled to be indemnified by the registration officer.

(5) The certification shall be deemed to be made by the company if it bears the signature of any of its officers or of any person authorised to certificate transfers on behalf of the company.

(6) The certification shall be deemed to be made by the registration officer if it bears the signature, whether handwritten or not, of the registration officer or of any officer or agent having his authority to certificate transfers of the company's shares or debenture stock.

(7) For the purposes of subsections (5) and (6), the certification shall be deemed to be issued by any person if the instrument of transfer bearing the certification is delivered or sent by him to the transferor, transferee or any other person named in the request for certification.

29. It shall not be lawful to provide in the Articles of a company that the company shall have a lien on any of its shares.

Company's
lien on shares

30. Shares need not be distinguished by a distinctive number but if any shares of a particular class bear a distinctive number all the shares of such class shall have a distinctive number.

Numbering
of
shares

31. (1) Every company shall within 1 month after the issue of any of its shares or after the registration of any transfer of any share deliver to the registered holder thereof a certificate duly signed stating—

Issue and
effect of
share
certificates

- (a) the number and class of shares held by him, and the definitive numbers thereof (if any) and the amount paid or credited as paid on such shares; and
- (b) save in the case of a certificate relating to a bearer share, the name and address of the registered holder; and
- (c) in the case of a public company, a summary of any special rights or restrictions as to dividend, winding up, voting, redemption or transfer attached to the shares or a statement specifying the paragraphs or sub-paragraphs of the Articles of the company which contain such special rights or restrictions.

(2) If a share certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the shares, shall renew the same on payment of a fee not exceeding the amount (if any) prescribed in the Rules and on such terms as to evidence and indemnity as the company may reasonably require.

(3) If default is made in complying with this section the company and any officer who is in default shall be liable to a fine not exceeding \$500, and if default shall persist the Court may order the company to deliver the certificate and may require the company and any such officer to bear all the costs of and incidental to the application and order that the officer be imprisoned for a term not exceeding 1 month.

(4) Statements made in or on a share certificate duly signed shall be *prima facie* evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid or credited as paid thereon.

(5) If any person shall change his position to his detriment in reliance in good faith on the continued accuracy of the statements made in such certificate the company shall be estopped in favour of such person from denying the continued accuracy of such statements and shall compensate such person for any loss suffered.

by him in reliance thereon and which he would not have suffered had the statement been or continued to be accurate:

Provided that nothing herein contained shall derogate from any right the company may have to be indemnified by any other person.

(6) For the purposes of this Ordinance a share certificate shall not be deemed to be duly signed unless it bears the common seal, if any, of the company affixed as provided in section 68 or it be signed by at least 2 directors, 1 of whom shall be resident in Kiribati, or by registrars in Kiribati appointed by the company (and whose appointment in the prescribed form has been notified to the Registrar) and any such signature need not be autographic but may be affixed by mechanical means or be printed if the certificate is issued by the auditors or registrars of the company in Kiribati and the certificate states that it is so issued.

Classifica-
tion of
shares

32. Subject as provided in this Ordinance, the Articles of a company may in paragraph 5 provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights, privileges, conditions or restrictions, and shares shall not be deemed to be of the same class unless they rank *pari passu* for all purposes.

Variation of
class rights

33. (1) If at any time the shares of a company are divided into different classes the rights attached to any class may not be varied except with the requisite class consent.

(2) Any alteration of the Articles of a company by inserting therein provisions regarding the variation of the rights of any class of shares or modifying the terms of any existing such provision shall require the class consent of the holders of the shares of each class so affected and shall be deemed to be a variation of the rights of each class.

(3) For the purpose of this section the expression "class consent" shall mean the consent in writing of the holders of not less than three fourths of the issued shares of the class or consent given by special resolution passed at a separate general meeting of the holders of the shares of the class:

Provided always that the Articles may provide for a larger proportion than three fourths of the said issued shares or that the majority required for the passing of such a special resolution shall be greater than that prescribed by section 81.

(4) Any member or members holding in the aggregate not less than 5 per cent of the issued shares of a class who did not consent to and whose shares were not included in any votes cast in favour

of the variation may apply to the Court for an order under section 118.

34. (1) Notwithstanding that the Articles of a company may provide that any class of shares shall confer no voting rights or shall confer the right to vote only in specific circumstances, subject as in this Ordinance provided every member of a company shall have the right to receive notice of and to attend and speak at all general meetings of a company and to appoint a proxy to attend in his place; and in his sanction to the issue by a company of a prospectus under section 61 the Registrar may require that the shares being offered to the public shall confer voting rights in such circumstances as the Registrar shall consider proper.

(2) Save in the case of a private company, or where cumulative voting is prescribed by the Articles for the election of directors, and subject to the provisions of section 92 (prohibiting the conferment of enhanced voting rights on a resolution to remove a director) it shall not be lawful for the Articles of a company to provide that any share of any class shall confer more than 1 vote in respect of such share.

(3) Any resolution subdividing any class of shares which would result in a diminution of the proportion of total votes exercisable at a general meeting by the holders of any other class of shares shall constitute a variation of the rights of that other class.

35. In construing the provisions of the Articles of a company in respect of the rights attached to shares, the following canons of construction shall be observed:—

- (a)** no dividend is payable on any shares unless the company shall resolve to declare such dividend, save that the directors may declare an interim dividend on any class of shares if the profits of the company justify such declaration; and
- (b)** unless the Articles otherwise specifically provide, a fixed preferential dividend payable on any class of shares is cumulative; that is to say no dividend shall be payable on any shares ranking subsequent thereto until all arrears of the fixed dividend have been paid and such shares shall bear the words "Cumulative Preference" or similar words in their title; and
- (c)** in a winding up, arrears of any cumulative preferential dividend, whether earned or declared or not, are payable up to the date of actual payment in the winding up; and
- (d)** if any class of share is expressed to have the right to a fixed preferential dividend then, unless the contrary intention is

stated, such class has no further right to participate in dividends; and

- (e) if any class of share is expressed to have preferential rights as to payment out of the assets of the company in its winding up then, unless the contrary intention is stated, such class has no further right to participate in the distribution of assets in the winding up, save that where such class confers the right to a cumulative preferential dividend such class shall be entitled to arrears of dividend as provided in paragraph (c); and
- (f) in determining the rights of the various classes of shares to participate in the distribution of the company's property in the event of winding up then, unless the contrary intention is clearly stated, no regard shall be paid to whether or not such property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern; and
- (g) where any share is expressed to rank preferential as to dividend such right shall confer no right of priority as to repayment of capital, and where any share is expressed to rank preferential as to capital such right shall confer no priority as to dividend; and
- (h) subject as aforesaid, all shares shall rank equally in all respects unless the contrary is stated in the Articles.

Allotment
of equity
shares

36. It shall not be lawful for the directors of a company, without the sanction of an ordinary resolution of the company, to issue any new or unissued equity shares of a company, or to issue debentures convertible into equity shares, unless the same shall first have been offered on the same terms and conditions to all the existing holders of equity shares of the company in proportion as nearly as may be to their existing holdings, and on voting on any such ordinary resolution, if any such issue is to be made to any person who is a director or member of the company, the votes of the director or member to whom the issue is proposed to be made shall be disregarded.

Issue of
shares at a
discount

37. It shall not be lawful for a company to issue shares having a par value at a discount or to issue shares having no par value at a price less than an amount arrived at by dividing that part of the stated capital contributed by shares issued of the same class by the number of such issued shares.

Prohibition
of financial
assistance for
acquisition
of shares

38. (1) It shall not be lawful for a company to give whether directly or indirectly and whether by means of a loan, guarantee,

the provision of security or otherwise any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made to any person of or for any shares of the company or of any other company which belongs to the same group of companies, and it shall not be lawful for a company to purchase or subscribe for, or lend money on the security of its own shares or to lend money on the security of shares of any of its subsidiary or associated companies:

Provided that nothing in this section shall be taken to prohibit—

- (a) the provision by the company in accordance with any scheme authorised by special resolution of the company for the subscription or purchase of shares of the company, or such other company as aforesaid, by trustees of shares to be held by or for the benefit of employees of the company (including directors holding a salaried employment or office) or of such other company as aforesaid; or
- (b) the making of loans to any employee (including, subject to the sanction of a special resolution of the company, a director holding salaried employment or office) of the company, or of such other company, for the purpose of enabling such employee to acquire not more than 5 per cent of the issued shares of the company, or such other company, to be held by such employee beneficially and not as a nominee of any person; or
- (c) the provision of money, guarantee or securities by a company under an employee participation scheme to which it is a party and which has been authorised by special resolution of the company; or
- (d) a voluntary transfer or surrender to the company of its shares without payment (and on any such transfer or surrender the shares shall be cancelled and the share capital of the company shall be reduced accordingly); or
- (e) the purchase of shares pursuant to a reduction of capital or the redemption of shares properly effected under this Ordinance; or
- (f) where the lending of money is part of the ordinary principal business of the company, notwithstanding that the loan maybe used for any such purchase or subscription, provided that the security (if any) for such loan does not comprise the shares intended to be purchased or subscribed; or
- (g) the payment by a company of a lawful dividend on its shares notwithstanding that the dividend received by a

shareholder is or may be used to repay any money, borrowed by him for the purpose of purchasing or subscribing shares.

(2) In the event of any breach of this section the transaction concerned, except in favour of a *bona fide* purchaser or seller of shares without knowledge of the breach, shall be voidable by the company and any payment made by the company shall be immediately repayable with interest at such rate as the Registrar shall determine, and every officer of the company shall be liable to a fine not exceeding \$1,000 or twice the amount of any provision or payment by the company in respect of the transaction (whichever is the greater) or to imprisonment for a term not exceeding 2 years, or both, and further shall be liable to the company to reimburse the company in the event of any loss to the company arising out of the transaction.

(3) Where any such loan or security as aforesaid is made or provided pursuant to the authority conferred by this section, so long as such loan or security is outstanding, any statement by the company as to the value of its share capital and reserves shall have deducted therefrom the amount for the time being outstanding in respect of such loan or the liability in respect of the provision of such security, and the amount for the time being outstanding in respect of such loan or provision shall be specifically stated in the balance sheet of the company with the number of shares acquired with the assistance of such loan or security and the identity of the person to whom such loan has been made and the relationship or connection of such person to or with any director of the company.

Loans to and
acquisition of
shares in
holding
company

39. (1) No part of the funds of a company shall be employed directly or indirectly in loans to any company which is its controlling company or which is a company controlled by that controlling company unless all the members consent to the loan and the loan is made on terms that it is repayable on demand, and if any such loan is made in contravention of this section the directors who authorised the making of such loan shall be jointly and severally liable to reimburse the company if the loan be not repaid.

(2) A company shall not be a member of any company which is its controlling company or of any company which is controlled by that controlling company, and any allotment or transfer of shares in contravention of this section shall be void save on an allotment of shares by way of capitalisation of profits or reserves, and where at the date of the commencement of this Ordinance or at any time thereafter a company holds shares in contravention of this section the directors of the company shall within 12 months of such date,

or the date on which the contravention of this section occurred, effect a transfer of such shares or otherwise procure that its share capital is reduced in such manner as shall be acceptable to the Registrar, and so long as such shares shall be held by the company no voting rights shall be exercisable in respect of such shares, and for the purpose of this section where shares are held by a nominee for a company such shares shall be deemed to be held by the company.

(3) Subsection (2) shall not prohibit the acquisition of shares in a company where the shares are held by a personal representative or trustee unless the controlling company is beneficially interested in the shares otherwise than by way of security for the purposes of a transaction entered into in the ordinary course of a business which includes the lending of money.

40. (1) It shall be lawful for a company to pay commission or brokerage to any person who is recognised by the Registrar as being a recognised underwriter of shares in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares in the company if the commission or brokerage paid or agreed to be paid does not exceed 10 per cent of the price at which the shares are issued and the rate per cent of the commission and brokerage paid or agreed to be paid is—

Commission
on shares

- (a) in the case of shares offered to the public disclosed in the prospectus; or
- (b) in the case of shares not offered to the public disclosed in a statement in the prescribed form delivered to the Registrar before payment of the commission or brokerage.

(2) All sums paid by a company by way of commission or brokerage in respect of any of its shares must be stated in the balance sheet of the company until written off, and where the balance sheet of a company shows an amount outstanding in respect of commission or brokerage paid any reference to the paid up share capital of the company in any publication made by the company of the extent of its paid up capital shall state only the paid up capital after deduction of the amount so shown to be outstanding in respect of commission or brokerage.

(3) It shall be unlawful for commission or brokerage to be satisfied by an allotment of, or an agreement to allot, shares of the company credited as fully paid or by the conferring or granting of a right to subscribe for shares of the company.

(4) If an allotment of shares is made in contravention of the

provisions of subsection (1) the directors of the company shall be liable jointly and severally to pay to the company on demand the amount of commission or brokerage paid in contravention of that subsection.

(5) On any allotment of shares in contravention of the provisions of subsection (3) being disclosed to and proved to the satisfaction of the Registrar he shall direct the company to forfeit the shares so allotted and the amount payable to the company in respect of such shares shall be paid to the Republic by the person to whom the shares were allotted and until payment shall be deemed to be a debt due to the Republic.

Share
capital

41. (1) The share capital of a company shall be stated in the Articles of the company and may be divided into shares having a par value or may be constituted by shares having no par value and where there are more than one class of shares, may include shares having a par value and shares having no par value:

~~Provided that all the shares of one class shall consist of either shares having a par value or shares having no par value.~~

(2) All the shares having a par value of any class of any existing company, or of any company incorporated after the commencement of this Ordinance, may by special resolution duly passed of the holders of such class be converted into shares of the same class having no par value, and all the shares having no par value of any class may by special resolution be converted into shares of the same class having a par value in such manner and on such terms as the resolution shall specify:

Provided that any such conversion shall not affect the rights of the holders thereof in respect of dividends, voting or repayment of capital on winding up or reduction of capital.

(3) Where any conversion is effected pursuant to subsection (2), in the case of conversion into shares of no par value there shall be transferred to the stated capital account of the company the whole of the capital relating to the shares so converted and the proportion of the share premium account contributed by or attributed to the shares so converted, and in the case of conversion into shares having a par value there shall be transferred to the share capital account of the company the proportion of the stated capital account contributed by the shares so converted.

(4) Fractions or fractional amounts arising in respect of the share capital or stated capital so converted may be rounded off and any surplus remaining shall be placed to non-distributable reserves.

(5) Shares up to the total number authorised by the Articles of the company may be issued at such times and for such consideration as the company shall determine, save that no shares shall be issued for cash unless the whole amount payable in respect thereof shall have been paid to the company prior to issue, and in the case of shares issued for consideration other than cash no share shall be issued unless the directors shall have received a certificate from the auditors of the company, or some other recognised professional valuer, that the consideration is in all respects equal to the value of the shares to be issued.

(6) Whenever a company makes an issue of shares it shall within 7 days thereafter forward to the Registrar for placing on the file of the company a return of allotments in such form as may be prescribed and such return shall before registration is completed by the Registrar be impressed with a note confirming payment of such stamp duty as may be payable and shall bear a certificate signed by the auditor of the company or, if there be no auditor, a director of the company confirming that the consideration has been received by the company, and unless and until registration of the return of allotments has been duly completed the shares so issued shall be deemed not to form part of the issued share capital of the company, and any holder of any such shares may at any time after the expiration of the said period of 7 days, and before registration of such return has been completed, demand repayment of the amount paid or credited as paid on the shares so held by him together with interest from the date of allotment at a rate to be determined by the Registrar and such demand shall constitute a debt due by the company immediately payable for the purpose of presentation of a petition for the compulsory winding up of the company, and the directors of the company shall be jointly and severally liable to such holder for such repayment in the event of default by the company.

(7) Where shares are issued for a consideration other than cash a certified copy of the auditor's or other recognised professional valuer's certificate as to the adequacy of the consideration (which certificate shall state the reasons for arriving at the valuation therein referred to) shall be attached to the return of allotments and the original certificate shall be attached to the register of members, and if a winding-up order be made against the company within 3 years after any such issue the Registrar may apply to the Court to order that all or part of the consideration was of less than the stated true value and the Court may in its absolute discretion direct that the original allottee or any subsequent holder of the shares so issued shall jointly and severally repay to the company such amount as the Court considers represents the deficiency in consideration.

(8) Shares shall not be deemed to have been paid for in cash except to the extent that the company shall have actually received cash therefor or by setting off a debt which the auditor or, if there be no auditor, a director of the company certifies is owed by the company and immediately payable, and where shares are issued to a person who has sold or agreed to sell property or rendered services to the company the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance (if any) shall be treated as having been paid in cash for such shares notwithstanding any exchange of cheques or other securities for money.

(9) No shares shall be issued to be paid for by the performance of services after the date of issue by the person to whom they are issued or any other person contracting to perform such services.

Alteration of
capital

42. (1) A company having a share capital may alter the provisions of its Articles as to the share capital of the company by passing a special resolution—

- (a) to increase the share capital by the creation of new shares having a specific par value of such amount as the resolution shall specify or to increase the share capital by the creation of new shares having no par value of such number as the resolution shall specify; or
- (b) to increase such part of its share capital as is constituted by shares of no par value by transferring reserves or profits to the stated capital with or without a distribution of shares; or
- (c) to consolidate and divide all or any part of its share capital constituted by shares having a par value into shares of larger amount than its existing shares or consolidate and reduce the number of the issued no par value shares; or
- (d) to subdivide its shares or any of them into shares of smaller amount than is fixed by its Articles or increase the number of its issued no par value shares without any increase in its stated capital; or
- (e) to convert all the shares having a par value of any class of its authorised share capital into stated capital constituted by shares of similar class having no par value; or
- (f) to convert any class of shares having no par value of its stated capital into authorised share capital of similar class of shares having a par value; or
- (g) to reduce the authorised share capital by cancelling shares which at the time of the passing of the special resolu-

ution altering the Articles have not been taken or been agreed to be taken by any person and to reduce the authorised no par share capital by cancelling shares of no par value which have not been taken or been agreed to be taken and so that any such cancellation pursuant to this subsection shall not be deemed to be a reduction of capital requiring sanction of the Registrar pursuant to section 46; or

(h) subject to any requisite class consents, to convert all or any of the shares of one class into shares of another or different class, including power to redesignate any issued shares as redeemable shares to which the provisions of section 45 as to redemption shall apply as if such shares had originally been issued as redeemable shares; save that any such redesignated shares shall not be redeemable earlier than 2 years after such redesignation except by way of reduction of capital pursuant to section 46 and no shares issued as fully paid up pursuant to section 66 (4) may be redesignated as redeemable shares; or

(j) subject to section 46, to reduce its share capital; or

(k) to effect any other alteration in its share capital which the Registrar has certified in writing does not represent a reduction of capital.

(2) Where in relation to any resolution altering the share capital which is passed pursuant to subsection (1) fractional entitlements arise the directors may make such arrangements as the Registrar shall approve to deal with any such fractional entitlements including an arrangement whereby fractions shall be disregarded.

(3) Any special resolution altering the capital of a company pursuant to the provisions of this section and any resolution reducing capital pursuant to section 46 shall provide for specific alteration of the provisions of the Articles of the company which are affected by such alteration.

43. Any resolution passed pursuant to section 42 shall not take effect until a certified copy of such resolution impressed with a receipt showing payment of any prescribed duty and fees shall have been delivered to and registered by the Registrar, and if any such resolution is not so delivered and registered within 14 days of its passing such resolution shall be void and have no effect; save that where a reorganisation of capital involving several special resolutions is effected at the same meeting each such special resolution shall have effect on the registration of copies of all the

Registration
of resolution
altering
capital

resolutions as aforesaid within the prescribed period as if each such special resolution had been duly passed and registered before the passing of subsequent resolutions passed at the same meeting:

Provided that a resolution reducing capital requiring confirmation as provided in section 46 shall not take effect until the issue by the Registrar of his certificate of confirmation.

Premiums on
shares

44. Where a company issues shares having a par value at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on the shares so issued shall be transferred to an account to be called "the share premium account" and the provisions of this Ordinance as to reduction of the share capital of a company shall, save as herein provided, apply as if the share premium account were paid up share capital of the company:

Provided that the share premium account may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid capitalisation shares or in writing off the preliminary expenses of the company or any expenses incurred by a company on the issue of its shares or in providing for the premium payable on the redemption of any shares of the company.

Redeemable
shares

45. (1) Subject to the maintenance by the company of its minimum paid up capital, a company may by its Articles designate any of its shares as redeemable shares and any shares so designated shall be available for issue by the company on such terms as to redemption as the Articles shall specify:

Provided that—

- (a) no such share shall be redeemed unless there shall have been delivered to the Registrar not more than 14 days previous to the date on which redemption is to be effected a statement specifying the shares to be redeemed and a certificate signed by a majority of the directors confirming that at the date of such certificate the company is not insolvent and that its minimum paid up capital has not been reduced and will not be reduced as a result of the proposed redemption and that the company will not be made insolvent if the redemption is completed and that the company has adequate capital facilities for the conduct of its business without resort to the capital to be redeemed and such certificate shall be counter-signed by the auditor (if any) of the company; and
- (b) any amount paid on redemption in excess of the issue price

of the shares to be redeemed shall be paid out of the share premium account or out of the revenue surplus account or out of the proceeds of a fresh issue of shares made for purposes of the redemption as provided in subsection (4).

(2) If a company shall fail to redeem any redeemable share on the terms specified in its Articles the holder of any redeemable share in respect of which default has been made shall be deemed to be a creditor of the company for the purpose of presentation of a winding-up petition against the company without such holder being required to institute formal proceedings against the company by reason of the default.

(3) Where a company has designated any part of its share capital as redeemable shares, in any statement which the company causes to make public as to its share capital the company shall disclose in conspicuous terms the amount of its share capital so designated and where the terms of redemption provide a fixed term or period during which redemption is to or can take place the relevant year, date or dates shall also be stated.

(4) For the purpose of capital duty if any share capital is created by the company for the specific purpose so declared in the requisite resolution of providing moneys towards the redemption of redeemable shares and the redeemable shares are redeemed within 1 month of the new shares being created the share capital shall not be deemed to have been increased except to the extent that such share capital exceeds the nominal capital represented by the shares which have been redeemed.

(5) Whenever a company redeems any of its shares under the provisions of this section it shall give notice in writing to each holder of the shares redeemed reminding such holder that the amount paid on redemption may be recoverable.

46. (1) A limited company may, subject to confirmation by the Registrar, by special resolution reduce its share capital in any manner: Reduction of capital

Provided that no such reduction shall be effective to the extent that it reduces the prescribed minimum paid up capital.

(2) Within 14 days after the passing of a special resolution to reduce capital the company shall deliver to the Registrar a certified copy of the special resolution and where the reduction involves repayment of capital to any member of the company together with a certificate in similar terms to the certificate referred to in section 45 (1) and, unless the company has no creditors or all the creditors have signified their consent in writing to the

proposed reduction of capital, there shall also be furnished to the Registrar a guarantee by a bank, or other financial institution acceptable to the Registrar, providing security for payment of creditors to such amount as the Registrar shall think in all the circumstances proper or evidence satisfactory to the Registrar that claims of creditors are adequately secured.

(3) On receipt of the documents and particulars referred to in subsection (2), the Registrar may in any particular case, at the expense of the company, cause a notice to be published in the *Gazette*, in the "Atoll Pioneer" and in any newspaper published outside Kiribati if the Registrar so determines having regard to the nature of the company's business, giving details of the proposed reduction, and, unless objection is made in writing to the Registrar pursuant to subsection (4) within 14 days of such notice appearing or the Registrar determines to dispense with such advertisement, the Registrar shall confirm the reduction and register details thereof in the file of the company at the Companies Registry and issue a certificate of confirmation which shall specify the details of the share capital of the company so reduced.

(4) Where any advertisement is published as provided in subsection (3), any creditor of the company who at the date of the passing of the special resolution is entitled to any debt or claim against the company, whether such debt or claim be present or future, certain or contingent, ascertained or sounding only in damages, shall be entitled to object to the reduction by notice in writing specifying his objection and the extent and nature of his claim against the company, such notice to be delivered to the Registrar (and a copy served on the company) within the period of 14 days specified in subsection (3).

(5) Where any objection is made pursuant to subsection (4), the Registrar shall within 7 days of the objection being made consider the reason for the objection and any representations made by the objector and the company and may refuse to confirm the resolution for the reduction or may confirm the resolution for reduction absolutely or subject to such conditions as he may impose relating to the company providing security for such creditor, and for this purpose the Registrar may modify the resolution which shall then be registered as so modified.

(6) A special resolution for a reduction shall take effect on and not before the issue by the Registrar of his certificate of confirmation and a copy of the said certificate shall accompany every copy of the Articles of the company issued by the company after the date of such certificate.

(7) If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to oppose the confirmation; or
- (b) wilfully misrepresents to the Registrar the nature or amount of the debt or claim of any creditor; or
- (c) aids, or abets or is privy to any such concealment or misrepresentation,

he shall be personally liable to pay to such creditor the amount of his debt or claim to the extent to which it is not paid by the company and shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$1,000 or both.

(8) If any resolution for reduction in capital shall vary the rights attached to any class of shares the company shall satisfy the Registrar that all necessary consents to the reduction shall have been obtained pursuant to section 33.

(9) Whenever a company reduces its share capital by repayment to any member under the provisions of this section it shall give notice in writing to each such member reminding him that the amount repaid may be recoverable.

47. (1) A public company may issue bearer share certificates only if the Registrar grants his permission to do so and in granting such permission the Registrar may impose such conditions as he considers proper.

Share warrants to bearer or bearer shares

(2) Bearer share certificates are negotiable instruments transferable by delivery and a purchaser for money or money's worth of shares represented by a bearer share certificate who has no knowledge of any defect in the title of the person from whom he acquires them obtains ownership of the shares free from the title of and any claim by any former holder.

(3) A company which issues a bearer share certificate shall provide for the payment of dividends by the issue of coupons to bearer and such coupons shall also be negotiable instruments and shall be governed by subsection (2).

(4) Regulations under this Ordinance may be made for the purpose of altering the rights of public companies generally, or of any public company specifically, to issue bearer share certificates or limiting the time during which such certificates may be valid and providing for the holders to become registered members of the company within a prescribed period on such terms as the regulations may prescribe or for providing that such certificates

shall be deposited with an authorised depository resident in Kiribati.

(5) The holder of a bearer share certificate may exercise the voting rights attached to the shares comprised in his certificate only through an authorised depository resident in Kiribati.

(6) Where any voting rights are exercised pursuant to subsection (5) the company shall accept a certificate duly signed by the authorised depository as sufficient evidence to admit the bearer shares to vote.

(7) A bearer certificate shall contain the same particulars as are required by section 31 in respect of registered share certificates save particulars of the name of the member and shall be described as a bearer share certificate.

(8) Where the Articles of a company require a director to hold shares of the company the holding of bearer share certificates shall not constitute the holding of the requisite share qualification.

(9) Where any of the conditions imposed by the Registrar on the issue of bearer shares are shown to have been contravened the directors of the company in default shall be liable to an unlimited fine or to imprisonment for a term not exceeding 6 months or both.

MORTGAGES AND DEBENTURES

Borrowing by
companies

48. Unless the Articles of a company otherwise provide, every company shall have power to borrow or raise money for the purposes of its business or to enter into any guarantee or other obligation which the directors consider it is in the interests of the company to enter into, and may secure such borrowing, guarantee or obligation by charge, pledge, deposit or otherwise of any of its assets as if it were a private individual, save that any instrument recording any such secured borrowing, guarantee or obligation must be under the hand of at least 2 directors 1 of whom must be a director resident in Kiribati.

Issue of
debentures

49. (1) Without prejudice to the power of a company to enter into any transaction for the purpose of borrowing or raising money for the purposes of its business or to be a party to any document recording terms upon which a debt or obligation incurred by the company shall be repaid or discharged, whether or not security be provided by the company, a company may borrow or

raise money or secure its indebtedness or support its guarantee or other obligation by the issue of a debenture or of a series of debentures or an issue of debenture stock.

(2) A debenture is a document by whatever name called containing a written acknowledgement of indebtedness by the company setting out the terms of repayment and other conditions of the loan made to or the debt incurred by the company.

(3) Unless the conditions endorsed on the certificates for the debentures of a series otherwise provide all debentures of the same series rank *pari passu* in all respects notwithstanding that they may be issued on different dates.

(4) Instead of issuing a series of debentures acknowledging separate loans to the company a number of loans may be funded by an issue of debenture stock of a prescribed amount parts of which, represented by debenture stock certificates, may be issued to separate holders.

(5) Every issue of debentures created by a public company, whether secured or unsecured, in respect of which a prospectus is to be issued shall be constituted by a trust deed whereby trustees approved by the Registrar are appointed to represent the interests of the debenture holders, save that any issue of less than 10 debentures in a series by a public company need not be constituted by a trust deed if the debenture certificates are endorsed with all the conditions attaching thereto.

(6) In this Ordinance except when the context otherwise requires the expression "debenture" includes "debenture stock" and the expression "debenture holder" includes "debenture stock holder" and vice versa.

(7) Notwithstanding that under this Ordinance a debenture holder may be entitled to receive a copy of the accounts of a company and under the conditions attached to debentures a debenture holder may be entitled to appoint or concur in appointing a director of a company, a debenture holder is not a member of the company and shall not be entitled to attend and vote at any general meeting of a company unless he shall also be a shareholder or a proxy for a shareholder but he may attend general meetings if the terms of the debenture so provide.

(8) A contract with a company to take up and pay for any debentures of the company shall not be capable of being enforced by an order for specific performance but any breach of any such contract shall entitle the company by way of liquidated damages to a sum equal to twice the amount contracted to be taken up and paid for less any amount actually taken up and paid for.

(9) Every company shall within 1 month after the allotment of any debenture deliver to the registered holder the debenture or a certificate for the debenture stock to which he is entitled and every such debenture or debenture stock certificate shall be under the common seal of the company or shall be signed by at least 2 directors of the company, 1 of whom shall be a director resident in Kiribati, and if the company be a public company, shall be in a form approved by the Registrar and if default is made in complying with this provision the moneys paid to the company shall become immediately repayable and the directors of the company shall be jointly and severally liable for such repayment.

(10) A condition contained in any debenture or in any trust deed constituting any issue of debentures may provide that the debenture or debentures shall not be redeemable by the company otherwise than upon its liquidation or that the debenture or debentures may only be redeemable at the expiration of a specific period or on the happening of a contingency, however remote.

(11) Debentures may be issued upon the terms that they may at the option of the company, or of the holder, be converted into shares of the company upon such terms and at such time or times as are stated in the debentures or the trust deed constituting the debentures:

Provided that no such issue may be made by directors of a company except pursuant to section 30 (as to the issue of debentures convertible into equity shares) with the sanction of a special resolution of the company and with the class consent of the holders at the time of the creation of the debentures of existing shares into which the debentures may be converted and any debentures issued with rights of conversion under this section shall be described as convertible debentures.

(12) Debentures may either be secured by a charge over the company's property or any portion thereof or may be unsecured, and where a debenture is unsecured such debenture, notwithstanding that it shall be a debenture for the purposes of this Ordinance, shall be described as an unsecured debenture, unsecured loan stock or an unsecured loan note, and any debenture which is incorrectly so described shall become immediately repayable and the directors of the company at the time of its issue shall be jointly and severally liable for such repayment.

(13) A charge securing any debenture may be either a fixed or specific charge on certain of the company's property or a floating charge over the whole or any part of the company's property or be both a fixed or specific charge and a floating charge.

(14) A charge securing debentures shall become enforceable on the occurrence of the events specified in the debentures or the trust deed constituting the same.

(15) A floating charge is a charge over the whole or a specified part of a company's property both present and future but so that the charge shall not preclude the company from dealing with the property comprised in the charge until—

(a) the security becomes enforceable and the person entitled to the benefit of the charge appoints a receiver or manager or enters into possession of such property; or

(b) the company goes into liquidation,

and on the happening of either of such events the floating charge shall be deemed to crystallise and to become a fixed charge on such of the assets of the company as are then subject to the charge, and if a receiver or manager is withdrawn and another is not appointed in substitution by the chargee or the chargee withdraws from possession before the charge has been fully discharged the charge shall thereupon cease to be a fixed charge and shall be restored to being a floating charge.

(16) A fixed charge on any property shall have priority over a floating charge affecting that property unless the terms on which the floating charge was granted prohibited the company from creating any later charge having priority over the floating charge and notice of such prohibition was given to the Registrar and registered by him.

(17) Whenever a fixed or floating charge becomes enforceable the chargee may appoint a receiver and in the case of a floating charge a receiver so appointed shall be deemed to be receiver and manager of the property subject to the charge and for the purpose of this Ordinance in relation to property subject to a floating charge, unless the context otherwise requires, the expression "receiver" includes "receiver and manager".

(18) In the case of a floating charge, notwithstanding that the charge has not become enforceable, the Court may on the application of the chargee appoint a receiver or manager if satisfied that the security of the chargee is in jeopardy, and for this purpose the Court may consider a security to be in jeopardy if it is satisfied that events have occurred, or are about to occur, which make it unreasonable in the interests of the debenture holder that the company should retain power to deal with the property comprised in the floating charge.

(19) A receiver or manager cannot be appointed as a means of enforcing unsecured debentures.

(20) The right to appoint a receiver conferred by subsection (17) and the right to apply to the Court under subsection (18) shall, where the company is a private company or being a public company the number of debentures having the benefit of the fixed or floating charge is less than 10, be exercisable by any debenture holder, and in any other case shall be exercisable only by the trustees of the trust deed constituting the debentures.

(21) Where a receiver is appointed on behalf of the holders of any debentures secured by a floating charge or possession is taken by or on behalf of such debenture holders, the debts which have priority shall be discharged in order of priority to the order set out in the Companies Act, 1948 of England, out of any assets coming into the hands of the receiver before any payment is made on account of principal or interest in respect of the debentures and if a receiver or any person taking possession as aforesaid shall make any repayment in respect of the debentures before discharging any such debts he shall be personally liable to discharge such debts to the extent of any repayment made by him.

(22) The provisions of sections 53 to 60 shall apply to and on the appointment of receivers and managers by or on behalf of debenture holders.

(23) If the winding-up of the company commences, or a Supervision Order is made in respect of a company, within 12 months of the creation of a floating charge by a company, such charge, unless it is proved that the company was solvent at the time of the creation of the charge, shall be invalid except to the amount of any cash paid to the company at the time of or subsequent to the creation of the charge and in consideration for the charge together with interest on that amount at a rate to be fixed by the Registrar.

Trustees for
debenture
holders

50. (1) Any debentures, whether or not secured by a charge on the company's property, may be constituted by a trust deed appointing trustees for the debenture holders but in the case of a public company any such appointment shall be subject to the provisions of section 49 (5).

(2) It shall be the duty of the trustees of a debenture trust deed to safeguard the rights of the debenture holders and on behalf of such holders to exercise the rights, powers and discretions conferred upon them by the trust deed.

(3) Where any debentures constituted by a trust deed provide that such debentures are secured debentures the charges securing the debentures shall vest in the trustees of such trust deed.

(4) The Court may, on the application of the Registrar or of any debenture holder, remove any trustee and appoint another in his place if satisfied that it is for any reason undesirable that the trustee shall continue to act:

Provided that where any application is made by a debenture holder such application shall be heard in chambers and the Court may direct the applicant to give security for payment of costs.

(5) Whenever a trustee ceases from any cause to be a trustee, unless there shall be at least 2 surviving trustees, a new trustee shall be duly appointed within 14 days of such retirement as provided in the trust deed and in default the Registrar may, on the application of any debenture holder, appoint another trustee or trustees in his place and for this purpose a trustee who resigns or is removed from office shall notify the fact to the Registrar within 7 days of such retirement and in the case of the death of a trustee the surviving trustee shall so notify the Registrar and any new trustee appointed shall notify the Registrar of his appointment.

(6) The remuneration of the trustee of a debenture trust deed shall be paid by the company in accordance with the terms set forth in the trust deed.

(7) The terms of any trust deed constituting any issue of debentures shall contain such provisions as to meetings of debenture holders, the rights and obligations of the trustee and as to such other matters affecting the debenture holders as the Registrar shall approve and no trust deed shall be executed except in a form approved in writing by the Registrar and every trust deed so executed shall be registered with the Registrar and no publication of the trust deed, or any reference thereto shall be made, until the Registrar has certified in writing that the trust deed has been duly registered, and if any company shall contravene this provision each director of the company (other than a director who has specifically dissented from such publication) shall be liable on conviction of the company to a fine not exceeding \$1,000.

(8) Any provisions contained in a trust deed shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against, liability for any breach of trust or failure to show the degree of care and diligence required of a trustee having regard to the powers, authorities and discretions conferred on the trustee by the trust deed:

Provided that nothing herein contained shall invalidate any release given to a trustee with the consent in writing of the holders of not less than three fourths of the outstanding debentures.

(9) In the case of any debentures which are to be offered for subscription or purchase by way of public offer requiring a prospectus under section 61 only an approved trustee shall be eligible for appointment as trustee of the trust deed constituting or securing the debentures and the Registrar shall specify by notice each company for the time being approved by the Minister as competent to exercise the duties of and accept appointment as trustee of a debenture trust deed, and any company which represents itself improperly as an approved trustee shall on conviction be liable to a fine not exceeding \$5,000 which shall be payable jointly and severally by the directors of such company in default of payment by the company.

(10) Notwithstanding that for the purposes of section 61 as to public offers of debentures an invitation to the public to deposit money with or to lend money to a company shall be deemed to be an invitation to acquire debentures, where any such invitation is made by a person registered under this Ordinance, or by the Minister, it shall not be necessary for such person to issue a debenture certificate or to constitute the issue with a trust deed and to appoint a trustee, but if any such person issues any debenture certificates to more than 10 persons such issue shall be constituted by the issue of a trust deed and the appointment of an approved trustee.

Registration
of charges

51. (1) Every charge by a company for the purpose of providing security for moneys raised or any obligation or debt incurred by the company shall be void so far as any security over the company's property is thereby conferred and shall not rank as a valid security in the event of the company becoming insolvent unless particulars in the prescribed form giving the details required by the Registrar are delivered to the Registrar for registration within 14 days of its creation, and in the case of the creation of a series of debentures or an issue of debenture stock constituted by a trust deed any charge created by such trust deed shall not be effective unless the first debenture of the series or the original trust deed shall be delivered to the Registrar for registration within 14 days of the creation of the series or the execution of the trust deed, and if registration be effected within the said period of 14 days as regards a number of charges created by a company priority as to security shall be determined by the date of execution of the relevant charges save where the terms of the instrument creating any charge otherwise provides.

(2) If a charge is rendered void by virtue of the provisions of subsection (1) the money secured by such charge shall become immediately repayable notwithstanding any provision to the con-

trary in the document creating the charge, and the directors of the company shall be jointly and severally liable for the repayment of such money in the event of the company failing to make such repayment, and if a winding-up order is made against the company the directors of the company shall be subrogated only as deferred creditors of a class set out in the Companies Act, 1948 of England, in respect of moneys paid by them under this subsection, unless the directors have delivered to the chargee particulars of the charge in the prescribed form for registration with the Registrar at the time of the execution of the charge.

(3) Nothing in this section shall affect the provisions of any other law relating to registration of charges.

(4) The particulars required to be delivered to the Registrar under subsection (1) shall be signed by the chargor and the chargee.

(5) Where a charge particulars of which require registration under subsection (1) is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount the said particulars shall specify the maximum sum deemed to be secured by the charge and such charge shall be void so far as any security on the company's property is thereby conferred as regards any excess of the stated maximum sum unless amended particulars of the charge stating the increased maximum sum deemed to be secured thereby are delivered to the Registrar within 14 days after the agreement by the chargor and the chargee to increase the original stated maximum, but any such registration of amended particulars shall be without prejudice to any rights in the property charged of any person which have been properly acquired subsequent to the registration of particulars of the original charge.

(6) Where a company acquires any property which is subject to a charge of such kind that particulars of it would, if it had been created by the company, have been required to be registered under this section the company shall cause to be delivered to the Registrar within 14 days of such acquisition particulars in the prescribed form giving the Registrar such information as he shall require and in default the validity of the charge shall not be affected but the charge shall become immediately repayable and the directors of the company at the time of the acquisition shall be liable in similar manner to the liability imposed on directors under subsection (7).

(7) Where at the date of the commencement of this Ordinance an existing company has property on which there is a charge particulars of which would require registration under this Ordi-

nance if it had been created after the date of such commencement then, unless the charge has been discharged or the property has ceased to form part of the property of the company prior to the expiration of 3 months from the date of such commencement, the company shall within such period cause particulars of any such charge to be delivered to the Registrar, and in addition every existing company shall within the said period deliver to the Registrar a statutory declaration made by a director and the secretary of the company stating whether or not there are any charges on the company's property particulars of which require to be registered under this section and confirming that all such particulars have been duly delivered to the Registrar, and if default is made in complying with this provision, or if any omission is made in respect of the statutory declaration before referred to, the validity of any charge particulars whereof are not so registered shall not be affected but such charge shall become immediately repayable and the directors of the company shall be jointly and severally liable to the chargee for payment of all moneys due under the charge and if a winding-up order be made against the company the directors shall be subrogated only as deferred creditors of a class set out in the Companies Act, 1948 of England, in respect of moneys paid by them under this provision.

(8) The Registrar on being satisfied that an omission to register particulars of a charge within the time required by this Ordinance or that any omission or mis-statement of any particular was accidental or due to inadvertence or to some other sufficient cause may, on the application of the company or any person interested and upon such terms as the Registrar considers proper, order that the time for registration be extended or that the omission or mis-statement be rectified, and where an extension of time is granted under this provision the charge shall not adversely affect any person who prior to the date of actual registration of the particulars shall have acquired any proprietary rights in or a fixed or floating charge on the property subject to the charge and shall be ineffective against a liquidator and any creditors of the company if the winding up of the company commences before the date of actual registration, and on registration being effected the provisions of subsections (2), (6) and (7) (whereunder the moneys secured by the charge become immediately repayable) shall cease to have effect.

(9) The Registrar on being satisfied that in respect of any charge of which particulars have been registered under this Ordinance—

- (a) the debt in respect of which the charge was created has been paid or satisfied in whole or in part; or

- (b) that the whole or part of the property charged has been released from the charge or has ceased to be in the ownership of the company;

shall enter on the file of the company a note or memorandum recording the extent to which the charge has been paid or satisfied or the release or cessation of ownership.

- (10) Every company shall cause a certified copy of every instrument creating any charge particulars whereof require to be registered under this Ordinance to be kept at the registered office of the company or at any other office where the register of members is kept:

Provided that in the case of a series of debentures or debenture stock a copy of the trust deed or, where no such trust deed is required, a copy of one of the debentures of the series shall be sufficient and the provisions of section 24 as to inspection of the register of members shall *mutatis mutandis* apply to the inspection of such copy and to the right to obtain copies of such instrument.

- (11) The registration of any particulars under this section shall constitute actual notice of all such particulars, but not of the contents of the instrument of charge, to all persons and for all purposes as from the date of actual registration.

- (12) The foregoing provisions of this section shall apply to all companies registered in Kiribati or whether the charge relates to property in Kiribati or elsewhere ~~and to all external companies in~~ respect of any charge within the provisions of this section if the charge relates to or affects property in Kiribati.

52. The provisions of sections 26 and 27 as to transfers and transmission of shares and the cancellation of shares held by missing members shall apply *mutatis mutandis* as to transfers and transmission of debentures and the cancellation of debentures held by persons of whose whereabouts the company is not aware:

Transfers and
transmission
of debentures

Provided that a company, other than a private company, may, subject to any consent or sanction required by law, issue bearer debentures transferable by delivery.

RECEIVERS AND MANAGERS

53. (1) The following persons shall not be competent to be appointed or to act as receivers or managers of any property or undertaking of a company:—

Qualification

- (a) an infant; or

- (b) anyone found by a competent court to be a person of unsound mind; or
- (c) a body corporate; or
- (d) anyone in respect of whom an order shall have been made under section 118 so long as such order remains in force, unless leave to act as receiver or manager of the property or undertaking of the company concerned has been given by the Court in accordance with that section; or
- (e) an undischarged bankrupt.

(2) A director or auditor of a company shall not be qualified for appointment as a receiver or manager of any property or undertaking of that company.

(3) Any appointment made in contravention of this section shall be void; and if any of the persons named in subsection (2) or in subsection (1) (a), (c), (d) or (e) shall act as such a receiver or manager he shall be liable to a fine not exceeding \$500, or, in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$500, or to both such imprisonment and fine.

**Powers and
duties**

54. (1) A person appointed receiver of any property of a company shall, subject to the rights of any prior incumbrancers, take possession of and ~~protect the~~ property, receive the rents and profits and discharge all outgoings in respect thereof and realise the security of those on whose behalf he is appointed; but, unless he is under the powers conferred by a floating charge appointed manager, he shall not have power to carry on any business or undertaking.

(2) A person who is acting as receiver and manager of the whole or any part of the undertaking of a company shall manage the same with a view to the beneficial realisation of the security of those on whose behalf he is appointed.

(3) As from the date of appointment of a receiver or manager the powers of the directors to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.

**Receiver
appointed by
Court**

55. A receiver or manager of any property or undertaking of a company appointed by the Court shall be deemed to be an officer of the Court and not of the company and shall act in accordance with the directions and instructions of the Court.

56. (1) A receiver or manager of any property or undertaking of a company appointed out of Court under a power contained in any instrument shall, subject to section 57, be deemed to be an agent of the person or persons on whose behalf he is appointed; and if appointed manager of the whole or any part of the undertaking of a company he shall also be deemed to be an officer of the company and to stand in a fiduciary relationship to it, and section 101 shall apply to a manager as if he were a director of the company:

Receiver
appointed
out of Court

Provided, however, that in the exercise of his powers he may, pursuant to section 101 (2), give special, but not exclusive, consideration to the interests of those on whose behalf he is appointed.

(2) Such a receiver or manager may apply to the Court for directions in relation to any matters arising in connection with the performance of his functions; and on any such application the Court may give such directions, or make such order concerning the rights of persons before the Court or otherwise, as the Court thinks fit.

(3) The Court may, on the application of the company or the receiver, by order fix the amount to be paid by way of remuneration to any such receiver or manager; and may from time to time on application made either by the company, or by the receiver or manager, vary or amend the order, and any such order shall specify by whom such remuneration shall be paid.

(4) The power of the Court under subsection (3) shall, where no previous order has been made with respect thereto under that subsection—

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and
- (b) be exercisable notwithstanding that the receiver or manager had died or ceased to act before the making of the order or the application therefor; and
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by this subsection shall not be exercised as respects any period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

Liability of
receiver

57. (1) A receiver or manager of any property or undertaking of a company shall be personally liable on any contract entered into by him except in so far as the contract otherwise expressly provides.

(2) As regards contracts entered into by him in the proper performance of his functions such receiver or manager shall, subject to the rights of any prior incumbrancers, be entitled to an indemnity in respect of liability thereon out of the property over which he has been appointed to act as receiver or manager.

(3) A receiver or manager appointed out of Court under a power contained in any instrument shall also be entitled, as regards contracts entered into by him with the express or implied authority of those appointing him, to an indemnity in respect of liability thereunder from those appointing him to the extent to which he is unable to recover in accordance with subsection (2).

Notification
of
appointment

58. (1) Where a receiver or manager of any property or undertaking of a company has been appointed, notice shall be given to the Registrar, and every invoice, order or business letter issued by or on behalf of the company or the receiver or manager, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section relating to invoices, orders or business letters the company and every officer, receiver or manager of the company who is in default shall be liable to a fine not exceeding \$100 in respect of each default.

Accounts of
receiver

59. (1) Every receiver or manager of any property of a company shall—

(a) within 1 month, or such longer period as the Registrar may allow, after the expiration of the period of 12 months from the date of his appointment, and of every subsequent period of 12 months until he ceases to act, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and payments during that period of 12 months; and

(b) within 1 month, or such longer period as the Registrar may allow, after he ceases to act as receiver or manager deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and payments during the period from the end of the 12 months to which the last abstract, if any, related, and the aggregate of his receipts and payments during the whole period of his appointment.

(2) Every receiver or manager who makes default in complying with the requirements of this section shall be liable to a fine not exceeding \$50 for every day during which the default continues.

60. (1) If any receiver or manager of any property or undertaking of a company—

Enforcement
of receiver's
duties

- (a) having made default in filing, delivering or making any return, account, or other document or in giving any notice which he is by any provision of this Ordinance required to file, deliver, make, or give, fails to make good the default within 28 days after the service on him of a notice requiring him to do so; or
- (b) having been appointed out of Court under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose make an order directing the receiver or manager to make good the default within such time as may be specified in the order and may provide that all costs of and incidental to the application shall be borne by the receiver or manager.

(2) An application for the purposes of this section may, in the case of such default as is mentioned in subsection (1), be made by the company, its liquidator or any member or creditor of the company or by the Registrar.

OFFERS OF SECURITIES TO THE PUBLIC

61. (1) It shall not be lawful for a public company to allot or agree to allot any shares or debentures of the company unless the person to whom the shares or debentures are allotted has had delivered to him a copy of a prospectus which has been duly registered with the Registrar not earlier than 3 months before the date of such allotment or agreement to allot, and no form of application for shares or debentures of a public company shall be issued unless it be accompanied by a copy of a prospectus which has been so duly registered:

Prospectuses
and public
offers

Provided that the provisions of this section shall not apply where the allotment or agreement to allot is not made pursuant to a public offer of shares or debentures.

(2) It shall not be lawful for any person to make a public offer of any shares or debentures without the consent of the Registrar who in granting such consent may impose such conditions or restrictions as he may think proper.

(3) For the purposes of this Ordinance a public offer shall be deemed to be made if an offer or invitation to make an offer is—

- (a) made, whether orally or in writing, circulated, advertised, published or disseminated by newspaper, broadcasting, cinematograph or by any other means whatsoever; and
- (b) made to any 1 or more persons whether selected as members or debenture holders of the company concerned or as clients, customers or creditors of the company or of the person making the offer or in any other manner:

Provided that—

(a) a public offer shall not be deemed to be made in the case of—

(i) an offer to existing holders of shares or debentures of the same class as the shares or debentures comprised in the offer without any right of renunciation; or

(ii) an offer without any right of renunciation to the holders of convertible debentures or debentures having subscription rights in respect of shares of the class into or in respect of which the right of conversion or subscription exists,

or if the offer is certified in writing by the Registrar to be an offer which the Registrar considers as not being calculated to result, directly or indirectly, in the shares or debentures becoming available to more than 20 persons or to persons other than those to whom the offer is made and which the Registrar considers as being a domestic concern of the persons making and receiving the offer; and

(b) if any such offer which under the provisions aforesaid is not a public offer is made in writing or published or disseminated by newspaper, broadcasting, or cinematograph or any other means not being an oral invitation made to any individual or group of individuals not exceeding 10 the terms of such offer may be approved by the Registrar.

(4) For the purposes of this Ordinance any public invitation to deposit money with or to lend money to any company shall be deemed for the purposes of this Ordinance to be an offer to allot debentures of the company and any such public offer to deposit money or lend money shall only be made by or on behalf of a

company which the Minister by order made under this section authorises to make a public invitation in terms of this section; and the Minister may in granting his authority impose such conditions and restrictions as he may consider proper and, without prejudice to the generality of the foregoing, the Minister may require that a copy of an advertisement, circular or brochure relating to such invitation shall be approved by and delivered to the Registrar for registration before it is published.

(5) Every prospectus issued in accordance with the provisions of this Ordinance shall be in such form and contain such information as the Registrar shall in his absolute discretion require and a copy of such prospectus, having attached thereto such documents as the Registrar shall require, shall be delivered to the Registrar for registration not less than 14 days before the date on which it is intended that the prospectus shall be issued and no prospectus shall be issued unless the Registrar shall have issued to the company a certificate of registration upon being satisfied that a copy of the prospectus and the requisite accompanying documents have been delivered to him and are in accordance with his requirements.

(6) Every prospectus shall on the face thereof bear the date on which the Registrar has certified its registration under this Ordinance.

(7) No prospectus shall be issued more than 3 months after the date of the registration of the prospectus with the Registrar and if a prospectus is so issued it shall be deemed to be a prospectus which has not been registered.

(8) The Registrar shall not register any prospectus which names any person as acting in any capacity for the company whose shares or debentures are being offered to the public or which contains or refers to any statement made by an expert unless he shall be satisfied that the person so named or the expert has given and has not withdrawn his consent to the publication of the prospectus and no prospectus shall be issued if prior to the issue thereof any such person so named or any such expert shall have withdrawn his consent to the publication of the prospectus.

(9) No company shall within 1 year after the date of registration of a prospectus vary or agree to the variation of any of the terms of any contract referred to in the prospectus unless the variation in specific terms is authorised by the class consent of the holders of shares or debentures of the class comprised in the prospectus.

(10) If any person acquires any shares or debentures of a

public company as a result of an untrue statement of a material fact made (whether innocently or fraudulently) in a prospectus published in relation to such shares or debentures such person shall be entitled to apply to the Court to order that he be permitted to rescind the acquisition of such shares or debentures provided that the claim to rescind is made within 6 months after discovering that the untrue statement was made.

(11) Where in accordance with any requirement of the Registrar it is stated in a prospectus that applications will not be accepted or treated as binding for a specified period, or that the public offer is conditional upon any permission being granted or that the offer is conditional upon a minimum subscription being subscribed, all moneys received by the person making the offer shall be kept in a separate bank account (particulars whereof are stated in the prospectus) and shall be deemed to be held on trust for the persons who have paid such moneys until any such condition has been fulfilled.

(12) If any condition referred to in subsection (11) is not fulfilled all moneys received shall be repaid without interest within 7 days of the expiration of the period stated in the prospectus for fulfilment of the condition, and the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 20 per cent per annum from the expiration of the said period of 7 days.

(13) In addition to the power of rescission conferred by subsection (10), where a prospectus has been issued any person who subscribes for or otherwise acquires shares or debentures of a company on the faith of any statement made in the prospectus or in any report or other document accompanying or referred to in the prospectus shall be entitled to apply to the Court to order compensation for any loss or damage he has sustained by reason that such statement is untrue, and if such a person has deposited money with or lent money to a company he shall be entitled to claim interest at such rate as may have been agreed to be paid on the deposit or loan.

(14) Subject to subsection (15), the following persons shall be liable to pay compensation in accordance with subsection (13):—

- (a) every person making the public offer to which the prospectus relates; and
- (b) every person who was a director of the company at the time the prospectus was registered or was named in the prospectus as a director; and
- (c) every person not within category (b) above who is named

in the prospectus as having agreed to become a director;
and

(d) every person who is named in the prospectus as a promoter; and

(e) every person named in the prospectus as an expert.

(15) No person shall be liable under subsections (13) and (14) if he proves—

(a) that as regards every untrue statement not purporting to be made on the authority of an expert (other than himself) or of a public official document or statement, he had reasonable ground to believe and did believe up to the time of the allotment of the shares or debentures that the statement was true; or

(b) that as regards every untrue statement purporting to be made by an expert or contained in what purports to be copy of or extract from a report or valuation of an expert, it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation and that he had reasonable ground to believe and did believe up to the time of the allotment thereunder that the person making the statement was competent to make it and had given the consent required by subsection (8) and had not withdrawn his consent in writing before the date of allotment; or

(c) that after registration of the prospectus and before any allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that the prospectus was published without his knowledge and that on becoming aware of its publication he forthwith gave reasonable public notice that it was published without his knowledge; or

(e) that being a person named in the prospectus as a director or as having agreed to become a director at the date of registration of the prospectus he was not a director and had not consented to becoming a director or that having consented to being so named he withdrew his consent and the prospectus was published without his authority; or

(f) if being a person named in a prospectus as an expert that the untrue statement was not made by him or that as regards any untrue statement made by him he was competent to make the statement and that he had reasonable grounds to believe and did believe up to the date of registration of the prospectus and any allotment thereunder that

it was true, or that having given his consent under subsection (8) he withdrew his consent in writing before registration of the prospectus or that after registration of the prospectus and before any allotment thereunder on becoming aware of the untrue statement he withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor.

(16) Where any person is named in a prospectus as a director or as having agreed to become a director or as an expert and he has not consented to be so named or has withdrawn his consent before registration of the prospectus and has not authorised or consented to the publication of the prospectus, every person making the public offer (except any without whose knowledge or consent the prospectus was published) shall be liable to indemnify any person referred to in subsection (15) against all damages, costs and expenses to which he may be liable by reason of his name having been inserted in the prospectus or the inclusion therein of a statement purporting to be made by him as an expert or in defending himself against any legal proceeding brought against him in respect thereof.

(17) For the purposes of this section a person shall be deemed to have given reasonable public notice of any of the matters before referred to if he shall have given to the Registrar and the company notice in writing of his withdrawal of consent and the reason therefor or that the prospectus had been published without his authority and inserted in the "Atoll Pioneer" and every other newspaper in which the prospectus had been published a notice in similar terms to the notice given to the Registrar.

(18) If any allotment of shares or debentures is made in contravention of subsection (1), all persons acting in contravention of that subsection shall be liable on conviction in the case of a body corporate to a fine not exceeding \$10,000 and in any other case to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000 or to both, and if as a result of any allotment in breach of subsection (1) any person enters into any transaction he shall be entitled to rescind the transaction and either in addition to or instead of rescission to recover compensation for any loss sustained by him (with interest at the rate of 20 per cent per annum from the date on which the transaction is effected) from any person who is liable (whether convicted or not) in respect of the breach and in the case where the breach is made by a body corporate the directors of such body corporate (other than a director who proves that he dissented from the breach) shall be jointly and severally liable for any compensation payable under this section.

(19) Where a prospectus, advertisement or circular published in relation to any public offer to dispose of shares or debentures of a company or to deposit money with or to lend money to a company contains any untrue statement, any person who published or authorised the publication of the prospectus, advertisement or circular shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both or in the case of a body corporate to a fine not exceeding \$5,000 which shall be payable jointly and severally by its directors (other than a director who proves that he dissented from such publication or authorisation) unless he proves either that the untrue statement was not material or that he had reasonable ground to believe, and did believe, up to the time of publication of the prospectus that it was true.

(20) For the purpose of this section, a person shall not be deemed to have published or authorised publication of a prospectus, advertisement or circular by reason only that he was the printer thereof, or of his having given consent as an expert pursuant to subsection (8) or being the Registrar by reason of having issued a certificate of registration in respect of the prospectus or having approved any such advertisement or circular.

(21) Any condition purporting to require or bind any person to waive compliance with any of the foregoing provisions of this section or to diminish the rights of any person under any of such provisions or to affect any person with notice of any contract, document, transaction or matter not specifically referred to in any prospectus, circular or advertisement shall be void.

(22) No person carrying on business in Kiribati shall allow his name to appear in any prospectus issued by a body corporate registered outside Kiribati unless a copy of such prospectus shall have been first delivered to and approved by the Registrar.

(23) It shall not be lawful for any private company to make or have made by any other person on its behalf any public offer of its shares or debentures.

ANNUAL RETURNS, ACCOUNTS, AUDITORS AND DIVIDENDS

62. (1) Every company shall in every year before 31 July in such year deliver to the Registrar for registration an annual return made up to the preceding 30 June in such form and containing such information and shall be accompanied by such documents as shall be prescribed and the regulations, in prescribing the form and contents of annual returns, may differentiate

Annual
returns

between the various types of companies incorporated under this Ordinance.

(2) If a company fails to deliver its annual return to the Registrar within 2 months of the date by which such return had to be registered as provided by subsection (1), the Registrar shall within 28 days of the expiration of the said period of 2 months publish the name of the company in the *Gazette* and in the "Atoll Pioneer" and as from the expiration of the last day of the month in which such publication is made the company shall be dissolved and struck off the Register unless prior thereto the company shall have delivered to the Registrar its outstanding annual return and such return has been accepted by the Registrar for registration; and the directors of the company at the date of dissolution and any persons who were directors during the preceding 15 months shall on demand account to the Registrar for the manner in which the assets of the company were disposed of during such period and shall be jointly and severally liable for the discharge of all liabilities outstanding at the date of dissolution, including the fee which was payable in respect of the annual return in respect of which default has been made:

Provided that the Court on application being made to it by any such person who was a director may relieve any such person from any liability to discharge any liability incurred or arising in respect of the period after the date on which he ceased to be a director.

Accounts

63. (1) Every company shall cause to be kept proper books of account with respect to its financial position and changes therein, and with respect to the control of and accounting for all property acquired whether for resale or for use in the company's business, and in particular with respect to—

- (a) all sums of money received and expended by or on behalf of the company and the matters in respect of which the receipt and expenditure takes place; and
- (b) all sales and purchases by the company of property, goods and services; and
- (c) the assets and liabilities of the company and the interests of the members therein.

(2) Proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to enable the preparation of proper profit and loss accounts and balance sheets containing the information required by or pursuant to this Ordinance and the directors shall be obliged to keep any particular type of book of account that the auditor (if any) of the company

shall in his absolute discretion consider appropriate to ensure compliance with this provision.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors, with the consent in writing of the auditors, approve, and shall at all times be open to inspection by any director, the secretary or the auditor and, if the Court so directs, by the Registrar or by any member who claims to be aggrieved and who has instituted proceedings under section 120.

(4) Where books of account are with such consent and approval as aforesaid kept outside Kiribati, the directors shall ensure that they shall be sent to and kept at a place in Kiribati for purposes of being open for inspection by any of the persons mentioned in subsection (3) and contain such information as will disclose with reasonable accuracy the financial position of the company at intervals not exceeding 1 month, and the auditor of the company shall in any case where this subsection applies in making his report as provided by this Ordinance certify that suitable arrangements have been made by the directors under this subsection.

(5) The books of account may be kept either by making entries in bound volumes or by a system of mechanical recording or other system approved by the auditor so long as any such system is one in respect of which adequate arrangements exist for making the information therein available in an intelligible form to anyone lawfully inspecting the books of account of the company.

(6) The directors of the company shall lay before each annual general meeting of the company—

- (a) a profit and loss account and balance sheet; and
- (b) a report by the directors thereon; and
- (c) a report by the auditors, if any; and
- (d) a report of any representative director made pursuant to section 110.

(7) Copies of the documents required by subsection (6) to be laid before each annual general meeting shall be sent with the notice convening such meeting to every person entitled to receive such notice and at the same time to the holders of every secured debenture of the company and to every employee of the company having not less than 3 years' employment with the company.

(8) In the case of a private company the provisions of subsection (6) shall not apply if pursuant to section 133 an annual general meeting is not held by such a company, and copies of the

said documents are sent to the persons entitled to receive the same within 6 months of the end of the financial year of the company.

(9) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year to which it relates and every balance sheet of a company shall give a true and fair view of the financial position and state of affairs of the company as at the end of the financial year, and where a company has subsidiary companies accounts or statements (hereinafter called "group accounts") dealing with the financial position and profit or loss of the company and its subsidiaries shall also be prepared and included with the said profit and loss account and balance sheet, and every such profit and loss account and balance sheet shall be approved by all the directors and signed on behalf of the directors by 2 directors.

(10) The report of the directors referred to in subsection (6) shall be a report by the directors on the state of the company's affairs as disclosed by the said accounts, including the affairs of its subsidiaries where group accounts have been prepared, and the amount, if any, which they recommend be paid by way of dividend, and such report shall be approved by all the directors and signed on behalf of the directors by 2 directors, and shall include a statement that there has been no material change in the financial position or prospects of the company since the date up to which the said accounts were prepared, or if such statement cannot honestly be made particulars of any such material change, and a report by a representative director shall be signed by such director.

(11) The report of the auditors referred to in subsection (6) shall be signed by the auditors, or where the auditors are a firm in the firm's name by the individual partner who has had specific control of the audit by his firm.

(12) The regulations shall prescribe the matters to be specified or contained in the reports and accounts referred to in this section, and may make different provisions in relation to companies of different types, classes or descriptions and may provide for any requirements to be dispensed with or modified in any particular cases.

(13) It shall be the duty of every company which is a subsidiary of another company in respect of which group accounts have to be prepared and of the directors and auditors of that company to give to the directors of such other company and its auditors all such information and access to records as the latter may reason-

ably require to enable group accounts to be properly prepared in accordance with this Ordinance.

(14) It shall be an offence for any person to issue or publish or circulate a copy of any profit and loss account or balance sheet of any company unless it be accompanied by the reports referred to in subsection (6) and is in the form required by this Ordinance, save that a fair and accurate summary of any profit and loss account or balance sheet and the auditors report thereon or a similar summary of the profit or loss figures for part of the company's financial year may be published if such publication be specifically approved by all the directors and signed on their behalf by 1 of them.

(15) If any director of a company fails to take all reasonable steps to secure compliance by the company with the provisions of this section, or if any person shall contravene any of the provisions of this section, he shall be liable, in respect of each offence, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500 or to both:

Provided that—

- (a) in any such proceedings against any such person for any such offence it shall be a defence if it is proved that he had reasonable cause to believe and did believe that some other competent and reliable person was charged with the duty of seeing that the provisions were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment unless the Court considers that the offence was committed wilfully.

(16) The first accounts of a company following its incorporation shall be for the financial period of the company commencing on the date of its incorporation and ending on 31 December next following and all subsequent accounts of the company shall be for financial periods commencing on 1 January and expiring on 31 December in every year:

Provided that the Registrar may in any particular case in his absolute discretion vary the said financial periods of any company and may further provide that any financial period shall extend beyond 31 December in any year.

(17) Every existing company shall have a period of 3 years from the date of the commencement of this Ordinance within which it shall ensure that its financial year expires annually on 31 December unless the Registrar consents to a variation in manner provided in subsection (16).

Appoint-
ment and
removal of
auditors

64. (1) No person shall be appointed as auditor of a company unless—

- (a) he shall prior to such appointment have consented in writing to be appointed;
- (b) he is duly qualified for appointment in accordance with the provisions of this section,

and within 7 days of an auditor being appointed the person so appointed shall give notice of his appointment in the prescribed form to the Registrar.

(2) A partnership firm may be appointed in the name of the firm as auditors of a company so long as all the members of such firm are duly qualified for appointment, and an appointment in the name of a firm shall be deemed to constitute the appointment of all the members for the time being of that firm as auditors notwithstanding any change in the partners of the firm.

(3) A person shall not be qualified for appointment as auditor of any company unless—

- (a) he is a member of a firm of accountants established in Kiribati and recognised by the Minister as being a firm of qualified accountants for the purposes of the Ordinance, or
- (b) in the case of a private company he is for the time being authorised under an order made by the Minister to be appointed as an auditor of a private company,

and in making any such order the Minister may make different provisions in respect of different classes or descriptions of private companies by reason of the extent or nature of their respective businesses or for any other reason that the Minister in his absolute discretion considers proper (including a provision that in any particular case or in any particular class of private companies that only persons qualified under paragraph (a) may be appointed auditors) and may limit the period during which any such authorisation is to have effect with power to revoke any such authorisation, and may further limit the number of companies (whether public or private) for which any 1 person or firm may be appointed to act as auditor.

(4) Notwithstanding the provisions of subsection (3), none of the following persons shall be qualified for appointment as auditor of a company:—

- (a) an officer or employee of the company or of any associated company; or

- (b) a person who is a partner of or in the employment of an officer or employee of the company or of any associated company; or
- (c) an infant; or
- (d) a person found by a competent Court to be of unsound mind; or
- (e) an undischarged bankrupt; or
- (f) any person in respect of whom an order has been made under section 118; or
- (g) any person who under an order under subsection (3) has been disqualified by the Minister from acting as an auditor; or
- (h) a person who is not ordinarily resident in Kiribati; or
- (i) a body corporate; or
- (j) a person who is connected directly or indirectly with the company or any associated company either by virtue of any shareholding in the company or by virtue of any relationship as a debtor or creditor of the company or any associated company:

Provided that nothing contained in paragraph (h) shall disqualify a person from being appointed as auditor who is the partner in a firm which has been appointed as auditor where such firm has an office in Kiribati under the management or supervision of a person qualified to act as auditor of a company under this Ordinance.

(5) Any person who is not qualified for appointment as auditor who shall act as auditor of a company or shall allow his name to be published as auditor of a company shall be liable to a fine not exceeding \$1,000, and the company by whom he is improperly appointed and every officer thereof who concurs in the default shall be liable to a fine not exceeding \$1,000.

(6) The first auditors of a company shall be named in the application made to incorporate the company and, unless any such auditor shall vacate office under the provisions of subsection (9), they shall hold office until the conclusion of the first Annual General Meeting of the company and shall be eligible for re-election.

(7) Save in the case of a private company which does not hold an Annual General Meeting, at each Annual General Meeting an ordinary resolution shall be submitted for the appointment of auditors of the company and upon such resolution being passed the auditors newly appointed shall hold office until the conclusion

of the next following Annual General Meeting at which they shall be eligible for re-appointment.

(8) No resolution shall be submitted at the Annual General Meeting for the appointment as auditors of any persons other than persons appointed as first auditors of the company or appointed as auditors at the last preceding Annual General Meeting unless special notice shall have been given as herein provided.

(9) (i) An auditor shall vacate office if he resigns by notice in writing to the company or if he ceases to be qualified to act as auditor or if he is not re-elected at the Annual General Meeting at which he is due to retire, and when any casual vacancy occurs in the office of auditor the directors shall fill the vacancy within 1 month of the vacancy arising and in default the directors shall at the expiration of such period notify the Registrar in writing, but so that the directors may not appoint to fill the vacancy any person who has not been re-elected as aforesaid.

(ii) Where 1 or more persons have been appointed to act jointly as auditors the continuing or surviving auditor may continue to act on any vacancy arising and the directors need not fill the vacancy.

(iii) An auditor of a private company shall vacate office if he resigns by notice in writing to the company or if he ceases to be qualified to act as auditor or if a resolution be passed at any general meeting of the company for his removal from office and in respect of such meeting the provisions of subsection (14) shall apply.

(10) Whenever an auditor resigns he shall at the same time as he gives notice in writing to the company send a copy of his notice of resignation to the Registrar together with a statement to the effect that there are no particular circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company or the Registrar or a statement of any such circumstances, and a copy of such statement shall accompany his notice of resignation to the company, and where such statement contains information which he considers should be brought to the notice of the members or creditors of the company there shall be sent by the company to each of the persons entitled under section 63 to receive copies of its accounts within 14 days of the receipt of such notice and statement a copy of such notice and statement.

(11) An auditor may accompany his notice of resignation with a requisition requiring the directors to convene a general meeting

for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to have placed before the members of the company and the provisions of section 77 shall apply to any such requisition and a copy of such requisition shall also be delivered by the auditor to the Registrar.

(12) Within 7 days of any change in the appointment of an auditor or in any of the particulars required to be given to the Registrar as regards the auditor of a company under this Ordinance notice in writing shall be given to the Registrar on the prescribed form.

(13) The remuneration of the auditors shall be fixed by the directors in the case of the first auditors and in any other case by ordinary resolution of the company or in such manner as the company may by ordinary resolution direct.

(14) Special notice (as if the resolution were a resolution to remove a director under section 93, the provisions whereof shall ~~mutatis mutandis~~ apply) shall be required of any resolution to appoint a person as auditor other than a retiring auditor or to re-appoint as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy or to remove the auditor of a private company.

65. (1) The auditors of a company whilst acting in the performance of their duties under this Ordinance are not officers or agents of the company but stand in a fiduciary relationship to the members of a company as a whole and shall act in such manner as faithful, diligent, careful and ordinarily skilful auditors would act in every circumstance.

Duties and
powers of
auditors

(2) Every auditor shall have right of access at all times to the books, accounts and vouchers of the company and of any associated company and any correspondence relating thereto and shall be supplied by every officer and employee of the company or of any such associated company and by the auditors of any such associated company with such information and explanations as the auditor may require for the performance of his duties.

(3) The auditors of a company shall be entitled to attend every meeting of the company or of its directors and to receive notice of all such meetings and to be heard at such meetings on any part of the business of the meeting which concerns them as auditors.

(4) The auditors of a company may at any time apply to the Court for directions upon any matter relating to the performance

of their duties and the company and its officers shall comply with any order made by the Court following such application.

(5) Before accepting appointment as auditor of a company the auditor shall communicate with the former auditor (if any) and invite him to make any representations and supply him with any information relating to the company of which he considers the new auditor should be informed.

(6) The auditors of a company may under the terms of any contract with the company expressly undertake obligations to the company in relation to detection of defalcations, advice on or supervision of systems of accounting, costing or advice on taxation or other financial matters.

(7) It shall be the duty of the auditor of a company—

(a) to examine the annual financial accounts and reports to be submitted to the members and to satisfy himself that these are in agreement with the accounting records and returns of the company and (where appropriate) any associated companies; and

(b) to satisfy himself that proper accounting records have been kept by the company and that proper returns adequate for the purposes of his audit have been received from branches of the company not visited by him; and

(c) to satisfy himself that the minute books and attendance registers in respect of meetings of the company and its directors and all statutory registers have been properly kept; and

(d) to examine or satisfy himself as to the existence of the assets of the company; and

(e) to obtain all the information and explanations as to the company's affairs which are necessary for the purposes of carrying out his duties; and

(f) to examine such of the accounting records and returns of the company and any associated company and to carry out such tests and auditing procedures as he considers necessary to satisfy himself that the accounts and reports of the company and any group accounts fairly present a true and fair view of the company's or group's affairs and the results of its operations and that of any associated company in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year; and

(g) to comply with any other duty imposed on him by this Ordinance.

(8) No provision of a company's Articles, and no resolution of a company, shall relieve an auditor from his duties under this Ordinance or indemnify him in respect of any breach of any such duty.

(9) If an auditor in the performance of his duties as auditor of a company under this Ordinance considers that there has been a breach or non-observance by the company of any of the provisions of this Ordinance; and that—

- (a) 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 or the circumstances are such that he considers the circumstances are to the detriment of the interests of members and for creditors of the company; or
- (b) the circumstances are such that the company cannot comply with the provisions of this Ordinance as to the time by which copies of its accounts are to be sent to members and to the holders of secured debentures,

the auditor shall without delay report the matter in writing to the Registrar with a report as to the relevant circumstances and at the same time send a copy of his report to the company.

(10) In the case of any company which under this Ordinance is not required to deliver a copy of its accounts to the Registrar and in respect of which the auditor's report is qualified, at the same time as a copy of the accounts is sent to each of the members of the company a copy shall be sent to the Registrar by the auditor of the company together with a notice drawing the attention of the Registrar to the auditor's report.

(11) If any person who under this Ordinance is required to provide the auditor of a company with information, explanation or records relating to the company or its affairs fails or refuses without lawful excuse to so provide or knowingly gives inaccurate or misleading information to the auditor or knowingly fails to disclose to the auditor information of matters which would be material to the preparation and audit of proper accounts of the company in accordance with this Ordinance or otherwise hinders or obstructs the auditor in the exercise of his duties, the auditor shall report the matter to the Registrar who may apply to the Court for a direction to such person to comply with such orders as the Court may give for the purpose of ensuring that the company complies with this Ordinance and in default any such person shall be deemed to be in contempt of Court and the Court in making any such direction may impose on such person a fine not exceeding \$5,000, and may sentence such person to imprisonment for a term not exceeding 2 years.

Dividends

66. (1) A company shall not pay a dividend except out of profits available for dividend as defined in subsection (2).

(2) For the purposes of this Ordinance the profits of a company available for dividend are the aggregate of its revenue profits and realised capital profits so far as not previously utilised (whether by distribution, capitalisation or otherwise) less the aggregate of its revenue losses and realised capital losses so far as not previously written off.

(3) A company shall not pay a dividend out of a realised capital profit unless the directors are satisfied that the value of the company's assets remaining after payment of the dividend shall be at least equal to the aggregate of the amounts at which they stand in the company's books and that the company is after such payment able to pay its debts as they fall due.

(4) Notwithstanding the foregoing provisions of this section, an unrealised appreciation in the value of any asset of the company which is supported by a professional valuation may be treated as profits available for dividend for the purpose only of paying up unissued non-redeemable shares of the company to be issued to members of the company as fully paid bonus shares by way of capitalisation of profits or reserves, and a company shall not apply an unrealised appreciation in the value of assets in paying up redeemable shares or debentures or in writing off revenue losses of realised capital assets.

(5) A company may by ordinary resolution declare dividends in respect of any year or other specified period, but no dividend shall exceed the amount recommended by the directors, and no dividend shall be paid unless—

- (a) the company will, after payment, be able to pay its debts as they fall due; and
- (b) the amount of such payment does not exceed the amount of the company's income surplus immediately prior to making such payment.

(6) The directors may from time to time pay to the members or to any class of members interim dividends and in the case of shares conferring the right to a fixed rate of dividend the directors may pay such dividends on such dates as they think fit:

Provided that no such interim or fixed dividend shall be paid by the directors unless they consider that the profits of the company (including its anticipated profits for the current year after due provision for any losses) justify such payment and the burden of proof shall rest with the directors in the event of any such payment being thereafter called into account.

(7) A company may by ordinary resolution in general meeting resolve that any sum representing profits available for dividend or forming the whole or part of any share premium account be transferred to stated capital account or be capitalised by distributing to the members of the company who would be entitled to receive such sum if it had been lawfully distributed by way of dividend unissued shares of the company credited as fully paid up and in the same proportions and the directors may make such arrangements as they think proper to deal with any fractions arising from an inability to distribute such shares in exact proportions:

Provided that the provisions of subsection (4) shall apply as regards the capitalisation of any such sum representing an unrealised appreciation in the value of capital assets.

(8) Any resolution of a company lawfully declaring a dividend may direct payment wholly or partly by distribution of securities for money or of fully paid (but not partly paid) securities of any other body corporate or of fully paid debentures of the company of a nominal amount equal to the amount so directed to be paid and the directors shall give effect to such a resolution and may make such arrangements as they think proper to deal with any fractional entitlements.

(9) Notwithstanding the provisions of section 23, any allotment of shares or debentures pursuant to such a resolution as aforesaid may be made without obtaining the individual consents thereto of the members concerned and any transfers of securities in any other body corporate may be signed or executed on behalf of the members to whom they are transferred by any person authorised in that behalf by the directors and such signature shall be effective and binding on all such members.

(10) If a company shall unlawfully pay any dividend to its shareholders or to any of them every director who concurred in or permitted the default shall be jointly and severally liable to restore to the company the total amount by which the dividend exceeds the amount which under this Ordinance would have been lawfully distributed with interest on such amount at the rate of 20 per cent per annum from the date of payment, and if the directors of the company make restoration to the company as aforesaid they shall have a right to be indemnified by any shareholder who has received an amount by way of dividend knowing that such payment contravened this Ordinance to the extent of the amount received by him with interest thereon at the rate of 20 per cent per annum from the date of payment.

(11) Whenever a dividend is properly declared under this Ordinance the directors shall place to the credit of a dividend

payment account with the bankers of the company the amount required for payment of such dividend and all payments by way of dividend shall be made from such account and any sum due to any member from such account which is not paid at the expiration of 5 years from the date of the declaration of dividend (or such longer period as the company's Articles may specify) shall be forfeited for the benefit of the company on a resolution of the directors being passed to such effect, and on receipt of a certified copy of such resolution the company's bankers shall transfer any sums so forfeited to the company who may thereafter utilise such sums as part of the assets of the company.

ACTS BY OR ON BEHALF OF THE COMPANY

Functions of
general meet-
ings, direc-
tors and
agents

67. (1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.

(2) Subject to the provisions of this Ordinance, the respective powers of the members in general meeting and the board of directors shall be determined by the company's Articles.

(3) Except as otherwise provided in the company's Articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Ordinance or the Articles required to be exercised by the members in general meeting.

(4) Unless the Articles shall otherwise provide, the board of directors when acting within the powers conferred upon them by this Ordinance or the Articles shall not be bound to obey the directions or instructions of the members in general meeting.

(5) Notwithstanding the provisions of subsection (3), the members in general meeting may—

- (a) act in any matter if the members of the board of directors are disqualified or are unable to act by reason of a deadlock on the board or otherwise; or
- (b) institute legal proceedings in the name and on behalf of the company if the board of directors refuse or neglect to do so; or
- (c) ratify or confirm any action taken by the board of directors; or
- (d) make recommendations to the board of directors regarding action to be taken by the board.

(6) No alteration of the Articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.

(7) Unless otherwise provided in the Articles, the board of directors may—

- (a) exercise their powers through committees consisting of such member or members of their body as they think fit; and
- (b) from time to time appoint 1 or more of their body to the office of managing director and may delegate all or any of their powers to such managing director; and
- (c) pursuant to section 98, appoint managers.

(8) Any act of the members in general meeting, the board of directors or a managing director or managers while carrying on in the usual way the business of the company shall be treated as the act of the company itself, and accordingly the company shall be criminally and civilly liable therefor to the same extent as if it were a natural person.

Provided that—

- (a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director or managers as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with, or relationship to, the company, he ought to have known of the absence of power or of the irregularity; or
 - (b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection therewith merely because the business in question was not among the businesses authorised by the company's Articles.
- (9) (i) Except as provided in subsection (8), the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless—
- (a) the company, acting through its members in general meeting, board of directors or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or
 - (b) the company, acting as aforesaid, shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the

transaction in reliance on such representation, unless such person had actual knowledge that the officer or agent had no authority or unless, having regard to his position with, or relationship to, the company, he ought to have known of such absence of authority.

- (ii) The authority of an officer or agent of the company may be conferred prior to action by him or by subsequent ratification; and knowledge of action by such officer or agent and acquiescence therein by all the members for the time being entitled to attend general meetings of the company or by the directors for the time being or by the managing director or managers for the time being, shall be equivalent to ratification by the members in general meeting, board of directors, managing directors or managers as the case may be.
- (iii) Nothing in this section shall derogate from the vicarious liability of a company for the acts of its employees while acting within the scope of their employment.

(10) Except as mentioned in section 51, regarding particulars in the register kept by the Registrar in respect of each company of particulars of charges, a person shall not be deemed to have knowledge of any particulars, documents or the contents of documents by reason only that such particulars or documents are registered by the Registrar or referred to in any particulars or documents so registered.

(11) Any person having dealings with a company or with someone deriving title under the company shall be entitled to make the following assumptions:—

- (a) that the company's Articles have been duly complied with; and
- (b) that every person described in the particulars filed with the Registrar as a director, managing director, secretary or managers of the company, or represented by the company, acting through its members in general meeting, board of directors, managing director or managers, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, secretary or managers of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned; and
- (c) that the secretary of the company, and every other officer

or agent of the company having authority to issue documents or certified copies of documents on behalf of the company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued; and

- (d) that a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purport to be the signatures of 2 persons who, in accordance with subsection (6) can be assumed to be a director and the secretary of the company,

and the company and those deriving title under it shall be estopped from denying the truth of any such assumption:

Provided that—

- (e) a person shall not be entitled to make such assumptions as aforesaid if he had actual knowledge to the contrary or if, having regard to his position with, or relationship to, the company, he ought to have known the contrary; and
- (f) a person shall not be entitled to assume that any 1 or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority by reason only that the company's Articles provide that authority to act in the matter may be delegated to a committee or to an officer or agent.

(12) Where, in accordance with this section, a company would be liable for the acts of any officer or agent, the company shall be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by, or signed on behalf of, the company.

68. (1) Contracts on behalf of a company may be made, varied or discharged as follows:— Contracts

- (a) any contract which if made between individuals would be by law required to be made in writing under seal, or which could be varied or discharged by writing under seal only, may be made, varied or discharged, as the case may be, in writing under the common seal of the company; and
- (b) any contract which if made between individuals would be by law required to be in writing or to be evidenced in writing by the parties to be charged therewith, or which could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, evidenced, varied or discharged, as the case may be, in writing signed in the name or on behalf of the company; and

(c) any contract which if made between individuals would be valid although made by parol only and not reduced to writing, or which could be varied or discharged by parol, may be made, varied or discharged, as the case may be, by parol on behalf of the company.

(2) A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed, on behalf of a company if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

(3) A document or proceeding requiring authentication by a company may be signed on its behalf by an officer of the company and need not be under its common seal, if any.

(4) (i) A company may empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place outside Kiribati;

(ii) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were executed by the company.

Seal of a
company

69. (1) A company may have a common seal, and if the directors of a company resolve that the company shall have a seal there shall be engraved upon such seal its name and registered number, and the directors shall entrust the safe custody of the seal to the secretary of the company or, if such secretary is not a professionally qualified person, to the auditors of the company.

(2) The seal shall not be used except with the authority of a resolution of the directors or of a committee of directors specifically empowered to authorise the affixing of the seal, and no person shall attest the affixing of the seal unless he is a person whose name appears in the register required to be kept under section 115 as being a director or secretary of the company or a person whose name has been notified to the Registrar as an authorised corporate signatory.

(3) Any provision in the Articles of a company whereby the affixing of the seal of a company may be attested by 1 duly authorised person alone shall be void:

Provided that the Articles of a public company may provide that certificates for fully paid securities issued by way of capitalisation of reserves may be issued under seal not attested where the manner of the issue of such certificates is under the supervi-

sion of the auditors or transfer registrars of the company and any such certificate may bear a printed copy of the seal of the company instead of such seal being physically impressed on the certificate.

(4) A company may have for use outside Kiribati an official seal which shall be a facsimile of the common seal of the company with the addition on its face of the name of the district or place where it is to be used provided that the company appoints a professionally qualified person to have and be responsible for the custody and use of such seal and gives notice in writing to the Registrar of the name and address of such person and all persons in such district or place who have been authorised by the company under its common seal to use and attest the use of such seal.

(5) The authority of any person duly authorised as aforesaid shall, as between the company and any other person dealing with such person, continue during the period (if any) mentioned in the instrument conferring the authority or, if no period is there mentioned, then until such other person has actual notice of the revocation or determination of the authority.

(6) Every person duly authorised as aforesaid shall by writing under his hand certify on the document on which the official seal is affixed the date on which and the place at which it is affixed and shall within 7 days of such date notify the company of all material particulars relating to the document to which the official seal has been affixed and within the like period shall forward a certified copy of the document to the company for its retention.

(7) Every company shall in a book to be kept for that purpose keep a record of all documents to which the common seal of the company or any official seal of the company has been duly affixed, and such record shall include the date of sealing and the names of the duly authorised signatories.

(8) Every document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(9) A company may have for its use a seal or seals additional to the seal which it first adopts, and where the directors resolve that any such additional seal or seals be adopted or wherever a new seal is adopted in place of a former seal which has been damaged or destroyed the directors shall ensure that every such seal is engraved with a distinct feature to distinguish it from its initially adopted seal, and the provisions of subsection (1) shall apply as regards the safe custody and use of any such additional seal.

MEETINGS AND RESOLUTIONS

Meetings

70. (1) Every company (other than a private company) shall in each year hold a general meeting as its Annual General Meeting in addition to any other meetings in that year and shall specify the meeting as the Annual General Meeting in the notices calling it; not more than 15 months shall elapse between the date of one Annual General Meeting and that of the next:

Provided that if the company holds its first Annual General Meeting within 15 months of its incorporation it need not hold it in the year of its incorporation.

(2) Save as provided in subsection (8), the Annual General Meeting shall be held not earlier than 21 days after copies of statutory accounts and reports shall have been despatched to members and any other persons under this Ordinance entitled thereto, and the said statutory accounts and reports shall be laid before the Annual General Meeting for consideration.

(3) If default is made in holding the Annual General Meeting, the auditor of the company shall forthwith notify the Registrar and the Registrar may present a petition for a winding-up order, and in addition every director of the company shall be liable to a fine not exceeding \$500 other than a director who is able to satisfy the Registrar that he took all reasonable steps to convene such a meeting.

(4) Every meeting of a company other than an Annual General Meeting shall be called an Extraordinary General Meeting.

(5) An Extraordinary General Meeting may be convened by the directors whenever they think fit and if at any time there are not within Kiribati sufficient directors capable of acting to form a quorum any director may convene a meeting.

(6) An Extraordinary General Meeting of a company may be requisitioned in accordance with section 77.

(7) Annual General Meetings shall be held in Kiribati as also all other meetings of a company or any class of its members, unless the company's articles otherwise provide as regards any such other meetings.

(8) Where a company is not able to comply with the provisions of section 63 as to the sending of copies of its accounts to its members, it shall be obliged to hold an Annual General Meeting within the period specified in this section and such meeting shall be convened on not less than 21 days' notice in writing to all persons entitled to receive such notice and at such meeting the directors shall give to the shareholders an explanation for the

failure to comply with section 63 and the ordinary business which is not dependent on accounts having been prepared shall be conducted at such meeting and a copy of the minutes of the meeting shall be delivered to the Registrar within 7 days of the meeting.

(9) Without prejudice to the provisions of subsection (3), if a company shall fail to hold an Annual General Meeting as required by this section the directors shall not be entitled to any remuneration for their services as directors for the period from the commencement of the financial year during which the meeting should have been held until the date on which the meeting is held.

71. (1) Meetings (other than adjourned meetings) shall be convened by notice in writing to all persons who are under this Ordinance or the Articles of the company entitled to receive notice of meetings. Notice of meetings

(2) Unless the Articles of a company prescribe a longer period of notice and subject as in this subsection provided, 21 days' written notice at least (exclusive of the day on which the notice is served, but inclusive of the day for which notice is given) shall be given:

Provided that in the case of a private company if all such persons consent in writing a meeting may be convened on less than 21 days' notice and in the case of a public company 2 or more members having a right to attend and holding not less than 55 per cent of the issued share capital may consent in writing to a meeting being convened on at least 7 days' notice instead of 21 days' notice and:

Provided further that where any members are entitled to vote only on some resolutions to be proposed at the meeting and not on others those members who are so entitled to vote shall be taken into account for the purposes of this subsection only in relation to such resolutions.

(3) In the case of a private company, all persons entitled to receive notice of a meeting and to vote thereat may consent in writing to dispense with such notice in addition to consenting to the meeting being convened on less than 21 days' notice.

(4) Every notice of a meeting must specify the date, place and hour of the meeting and the general nature of the business to be transacted thereat in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution or an ordinary resolution a copy of which requires to be registered with the Registrar pursuant to

section 87 (2), shall set out the precise terms of the resolution, and where any resolution refers to a contract or other document to be submitted to the meeting the notice shall be accompanied by or contain a statement adequately summarising the contents of such contract or other document and giving details of the place in Kiribati and time at which a copy of such contract or other document is available for inspection.

(5) In the case of notice of an Annual General Meeting a statement that the purpose of such meeting is to transact the ordinary business of an Annual General Meeting shall be deemed to be a sufficient specification that the business is to declare a dividend, consideration of the statutory accounts and reports, the election of directors in place of those retiring, the remuneration of the auditors and (subject to compliance with sections 64 and 93) the removal of auditors and directors and the election of others in their place.

(6) Save as provided in subsection (3) in the case of a private company, no business shall be transacted at any general meeting unless notice of the meeting is duly given.

(7) In every notice convening a general meeting there shall be displayed prominently a statement indicating that a person entitled to attend and speak at the meeting may appoint a proxy to attend and at such meeting to exercise on his behalf all rights conferred on him by this Ordinance or the company's Articles in relation to general meetings, and that a proxy need not be a member of the company, and if default is made in complying with this subsection the notice shall not be invalidated but every director and the secretary of the company shall be liable to a fine not exceeding \$50.

(8) The following persons shall be entitled to receive notice of and to attend and speak at all general meetings of a company:—

- (a) every member; and
- (b) every person who satisfies the directors that he is a person upon whom the ownership of a share has devolved by reason of his being the legal personal representative, receiver or trustee in bankruptcy of a member; and
- (c) every director of the company; and
- (d) every auditor of the company; and
- (e) every person who under the terms of any debenture or other loan security of the company is thereby entitled to receive notice of general meetings; and
- (f) in the case of a public company, the Registrar; and

- (g) the secretary or joint secretaries of the company; and
- (h) the solicitor or other legal adviser to the company:

Provided that in the case of joint holders of a share only 1 of such holders shall be entitled to attend and speak and receive notice and vote at any general meeting and in any such case the senior of such holders shall be the person entitled, seniority being determined by the order in which the names of such holders appear in the Register of Members, but nothing herein contained shall preclude other persons from attending and speaking at any general meeting with the permission of the chairman thereof.

(9) Unless the Rules of a company otherwise provide, every member of a company shall on a show of hands have 1 vote irrespective of the number of shares held by him and on a poll every member shall have 1 vote for each share of which he is the holder.

(10) Subject to the provisions of section 27 (15), a person who satisfies the directors that he is a person upon whom ownership of a share has devolved by reason of his being the legal personal representative, receiver or trustee in bankruptcy of a member may exercise all voting rights which would have been exercisable by such member and in the case where more than 1 person is a person as aforesaid the senior of such persons shall be accepted by the directors for purposes of voting, seniority being determined by the order in which the names of all such persons appear in the official evidence produced to satisfy the directors as aforesaid.

72. (1) Notice may be given to any person entitled thereto either personally or by sending it through the post addressed to such person at the address recorded in the Register of Members as the address to which notices are to be sent:

Service of
notices

Provided that in the case of a person entitled to notice by virtue of being the legal personal representative, receiver or trustee in bankruptcy or solicitor or advocate of a member, until particulars of his entitlement shall have been entered in the Register of Members, it shall suffice if notice is given in the manner in which the same might have been given if the death, receivership or bankruptcy had not occurred.

(2) Notice may be given to joint-holders of a share by giving the notice to the joint-holder named first in the Register of Members in respect of the share.

(3) Where a notice is sent by post, service shall be deemed to be effected by properly addressing, pre-paying and posting a let-

ter containing the notice and to have been effected at the expiration of 7 days after the letter containing the same is posted. The letter need not be registered or sent by recorded delivery but where it is despatched to an address outside Kiribati it shall be despatched by air mail.

(4) In the case of any company which has bearer shares notice shall be given to the holders of such shares by inserting a copy of the notice in the *Gazette* and in any other newspaper or publication specified in the company's Articles.

Circulation
of members'
resolution

73. (1) A company shall at its own expense, on the request of any member entitled to attend and vote at a general meeting, include in the notice of that general meeting notice of any resolution which may properly be moved and is intended to be moved at the meeting and, at the like request, include with such notice a statement of not more than 500 words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at that meeting:

Provided that if the proposed resolution is not passed at that meeting the same resolution or one substantially to the same effect shall not be moved at any general meeting within 2 years thereafter unless the directors shall otherwise agree or unless the request is within the said period of 2 years supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

(2) A company shall not be bound to give notice of any such resolution or to circulate such statement unless the written request or requests, signed by the member or members concerned together with the resolution and statement, are deposited at the registered office of the company not less than 6 weeks before the meeting:

Provided that if, after such documents have been deposited, a general meeting is called for a date 6 weeks or less thereafter the documents shall be deemed to have been properly deposited.

Circulation
of members'
circulars

74. (1) A company shall at the request in writing of any member entitled to attend and vote at a general meeting but at the expense of that member (unless the company in general meeting resolves by ordinary resolution that such expenses be discharged in whole or in part by the company, and any such resolution may be submitted at such meeting) circulate to members of the company a statement of not more than 1,000 words with respect to any business to be dealt with at that meeting.

(2) Such statement shall be circulated to members of the company in any manner permitted for service of notice of the meeting and, so far as practicable, at the same time as notice of the meeting or, if that is impracticable, as soon as possible thereafter.

(3) A company shall not be bound to circulate such statement unless—

- (a) the written request, signed by the member concerned, together with the statement, is delivered to the secretary of the company not less than 10 days before the meeting;
- (b) there is also deposited with the secretary a sum determined by the Registrar to be reasonably sufficient to meet the company's expenses in giving effect thereto.

75. (1) A company shall not be bound to comply with section 73 or 74 as regards the circulation of any statement or circular from a member if on the application of the company or of any other person who claims to be aggrieved the Court is satisfied that the rights conferred by those sections are being used to secure needless publicity for defamatory matter, and the Court may make an order as to costs against the member notwithstanding that he may not appear to the proceedings.

General provisions affecting sections 73 and 74

(2) If a company makes default in complying with section 73 or 74 every director who is in default shall be liable to a fine not exceeding \$100 and shall be surcharged all expenses incurred by the member in circulating such statement or circular.

76. (1) If for any reason it is shown to the Registrar that it is impracticable to call a meeting of a company or to conduct the meeting in accordance with the Articles of the company or this Ordinance, the Registrar on the application of any director or member of the company or other person entitled to vote at meetings of the company may order a meeting of the company to be called and determine the manner in which such meeting is to be called and conducted and the business to be conducted thereat, and any meeting so called held and conducted shall for all purposes be deemed to be a valid meeting of the company, and this provision shall also apply as regards class meetings *mutatis mutandis*.

Power of Registrar to order a meeting

(2) In making any order under this section the Registrar may surcharge any director of the company whom he considers to be in default for all expenses incurred in calling the meeting as a debt due to the Republic.

Requisition
of meetings

77. (1) The auditor of a company and any member or members of a public company who holds or hold not less than one-twentieth of the shares of the company as at the date of the deposit of the requisition carries the right of voting at general meetings of the company, or where a class meeting is to be requisitioned of the relevant class of the shares of the company where the company has more than one class of shares and a class meeting is to be requisitioned, may requisition a meeting of the company, or of the holders of the shares of that class, and the directors shall comply with any valid requisition within 7 days thereafter by convening a meeting of the company or the class to be held not later than 28 days after the receipt by the company of the requisition.

(2) If default is made by a company in complying with a valid requisition the requisitionist may notify the Registrar who shall convene the meeting requested and shall surcharge the directors of the company jointly and severally for all expenses incurred by him in convening the meeting as a debt due by such directors to the Republic.

(3) In the case of a private company the right to requisition a meeting of the company shall be exercisable by any member irrespective of the number of shares held by him.

(4) In the case of the death or bankruptcy of any member the rights conferred by this section shall be vested in the legal personal representatives or trustee in bankruptcy whether or not they or he have or has been registered as the holder of the shares of the deceased or bankrupt member.

(5) The requisition shall state the nature of the business to be transacted at the meeting and shall be signed by the requisitionist and sent to or delivered at the registered office of the company or the address which the company has given pursuant to section 19 for service of documents on the company.

Quorum

78. (1) No business shall be transacted at any meeting unless a quorum, as fixed by the Articles of the company, is present at the time of the commencement of the meeting, and if the quorum is not present throughout the meeting the business for which the meeting has been convened may continue to be dealt with notwithstanding that a quorum be not present throughout the meeting:

Provided that where under the company's Articles members are present who have restricted voting rights such members shall be counted towards a quorum in respect of the business on which they have voting rights but not in respect of other business, and if

a quorum be present in respect of the business on which they have voting rights such business may be conducted notwithstanding that a quorum is not present in respect of other business for which the meeting was convened.

(2) Unless the company's Articles otherwise provide, the following shall constitute a quorum:—

- (a) if the company has only 1 member that member or his proxy may constitute a quorum; and
- (b) in any other case 2 members present in person or by proxy or 1 member so present who holds or represents more than 50 per cent of the voting rights exercisable at the meeting.

(3) Unless otherwise provided in the company's Articles, if a quorum is not present within half an hour after the time appointed for the meeting, the meeting if convened upon the requisition of members in accordance with section 77 shall be dissolved, and in any other case shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour after the time appointed the members or single member present in person or by proxy shall constitute a quorum.

(4) Where the meeting is adjourned to the same day, place and time in the following week no notice need be given, otherwise not less than 7 days' notice in writing of the adjourned meeting shall be given to all persons entitled to receive notice of the original meeting.

79. Unless the Articles of the company otherwise provide, the chairman (if any) of the board of directors shall preside at all general meetings of the company or, if there be no such chairman or if he shall not be present at the commencement of the meeting or is unwilling to preside, the directors present shall choose 1 of their number to act as chairman of the meeting, or, if no director is present or willing to preside, the members present shall choose 1 of their number to be chairman of the meeting. Chairman for meetings

80. (1) Any person entitled under this Ordinance to attend Proxies and vote at any meeting of the company shall be entitled to appoint as his proxy another person to attend and vote instead of him and such proxy shall have the same rights as the member to speak at the meeting.

(2) A proxy need not be a member of the company.

(3) A form of proxy may provide for the appointment of several persons in the alternative to act as proxy in the event of the absence of any such persons, and where a member holds more than 1 share he may appoint separate proxies (not being in excess of 4) to represent respectively such number of shares held by him as may be specified in the instrument of appointment.

(4) The instrument appointing a proxy shall be in writing under the hand of the appointor, or his duly authorised agent, or if the appointor is a body corporate under the hand of an officer or duly authorised agent, and shall be deemed to confer authority to demand or join in demanding a poll.

(5) The Articles of every company shall contain such provisions as the Registrar shall approve as to the form of proxies and the procedure for lodging proxies with the company, and any provision in such Articles shall be void if it requires a proxy to be lodged with the company more than 24 hours before a meeting or adjourned meeting or the time appointed for taking a poll.

(6) The appointment of a proxy shall be terminated by the death of the appointor or by his revocation of the proxy or the authority under which it was executed and by the personal attendance of the appointor at the meeting, and the later appointment of another proxy in respect of the same share shall be deemed to be a revocation:

Provided that a vote given in accordance with a proxy may be treated as valid by the company (without prejudice to the position in law as regards the proxy) notwithstanding the termination or revocation or deemed revocation of the appointment so long as no intimation in writing of the termination or revocation or deemed revocation or of the events causing the same shall have been given to the company at its registered office or other place appointed for the deposit of proxies before the commencement of the meeting or adjourned meeting or the time for taking the poll.

(7) For the purpose of any meeting a company shall not be entitled to send out any invitations to appoint as proxy a person or one of a number of persons named in the invitations to any member unless such invitation is extended to all members and all such invitations shall indicate that any other person may be substituted for any of the persons named and shall provide in clear manner that the invitee may indicate the manner in which he wishes his votes to be cast on every resolution dealing with special business to be submitted at the meeting and shall further state that in the absence of express instructions the proxy will vote as he thinks fit, and for the purpose of this subsection "special business" means—

- (a) all business transacted at an Extraordinary General Meeting; and
- (b) all business transacted at an Annual General Meeting other than the ordinary business of such meeting as defined in section 71.

(8) Where instruments of proxy are duly completed and returned in accordance with the instructions in any such invitations and are not revoked then—

- (a) it shall be the duty of the chairman of the meeting to demand a poll after any vote by a show of hands unless the result on the show of hands is in accord with the directions, if any, given in all such instruments of proxy; and
- (b) on any poll the votes of the members concerned shall be deemed to be cast in accordance with the directions, if any, in such instrument of proxy notwithstanding the absence, abstention or purported vote to the contrary of the proxy, and the chairman may before any vote is taken on any resolution announce to the meeting the number of proxy votes received by the company for and against the resolution in respect of such invitation.

(9) Where a company contravenes any of the provisions of this section any resolutions passed at the meeting shall be invalid and every officer of the company who concurred in the default shall be liable to a fine not exceeding \$500.

(10) The Court may on the application of the company or any member entitled to vote at the meeting or the Registrar annul any proxy if satisfied that the appointment was obtained by any material misrepresentation of fact (whether made fraudulently or not) and in making any such order the Court may further direct that the meeting shall be postponed to such date as the Court may direct and may make such ancillary or consequential directions as it thinks fit.

(11) All proxies received by a company shall be retained for a period of at least 1 year.

81. (1) Without prejudice to the power of a body corporate to appoint a proxy, a body corporate may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting or class meeting of a company of which it is a member.

Corporations
—representa-
tion at
meetings

(2) A person authorised to represent a body corporate as aforesaid shall upon production of a duly certified copy of the

resolution by which he was authorised be entitled to exercise the same powers on behalf of the body corporate he represents as that body corporate could exercise if it were an individual shareholder of the company.

Resolutions
and voting

82. (1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of the votes cast at the meeting by such members as, being entitled so to do, vote at such meeting in person or by proxy.

(2) A resolution shall be a special resolution when it has been passed by a majority consisting of not less than three-fourths of the votes cast at the meeting by such members as, being entitled so to do, vote at such meeting in person or by proxy and the notice convening the meeting specifies the intention to propose the resolution as a special resolution.

(3) The terms of any resolution (whether special or ordinary) before any general meeting may be amended by ordinary resolution at the meeting provided that the chairman of the meeting certifies that in his opinion the amended resolution will still be such that adequate notice of the intention to pass the same can properly be deemed to have been given in accordance with this Ordinance and a proxy may vote on any such ordinary resolution or amendment as he thinks fit.

(4) Unless the company's Articles otherwise provide, a resolution put to the vote at a meeting shall be decided on by a show of hands unless a poll is (before or on the declaration of the show of hands) demanded—

(a) by the chairman; or

(b) by at least 5 members present in person or by proxy; or

(c) by any member or members present in person or by proxy and representing more than one-tenth of the voting rights exercisable at the meeting on the resolution; or

(d) by any member of a private company,

and so that any provision in a company's Articles shall be void if it renders ineffective—

(e) the right to demand a poll on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(f) any demand for a poll made by any of the persons specified in paragraph (b), (c) or (d).

(5) A demand for a poll may be withdrawn.

(6) Where a poll is properly demanded it shall be taken at such time and in such manner as the chairman may direct and the result of the poll shall be recorded in the minutes of the meeting and all voting papers shall be retained by the company for at least 1 year, and where a poll is not to be taken at the time when it is demanded the meeting shall be continued for the remaining purposes set out in the agenda for the meeting.

(7) Where the company's Articles so provide, the chairman of the company may direct that instead of a poll voting shall be by postal ballot in accordance with the procedure prescribed by such Articles, and a postal ballot so conducted shall for all the purposes of this Ordinance be deemed to be a poll.

(8) On a poll a member entitled to more than 1 vote or any proxy representing him need not, if he votes, cast all his votes in the same manner or cast all his votes.

(9) On a show of hands every member present in person and entitled to vote and every person present at such meeting as a proxy and so entitled to vote shall have 1 vote only.

(10) Unless the Articles of the company otherwise lawfully provide, on a poll every member, or his proxy, shall have 1 vote for each share of which the member is the holder.

(11) Unless the Articles of the company otherwise provide, in the event of an equality of votes the chairman of the meeting shall have a second or casting vote whether on a show of hands or on a poll.

(12) Where under any provision of this Ordinance on any resolution votes of a member have to be disregarded the member shall inform the chairman of the meeting before the vote is taken, and if he votes in contravention of this Ordinance the resolution shall be void and he shall be liable to a fine not exceeding \$1,000.

83. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be counted to the exclusion of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

Voting by
joint holders.

84. A member of unsound mind may vote at any meeting by such person as may be appointed for that purpose by any competent court and the person so appointed may appoint a proxy, provided that a certified copy of any such appointment by such court shall be delivered to the company before the meeting.

Votes by
persons of
unsound
mind

Adjourn-
ments

85. (1) The chairman of any meeting may, with the consent of any meeting, and shall, if directed by ordinary resolution passed at such meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and any additional business of which due notice has been given.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, and, save as aforesaid and save where the ordinary resolution directing the adjournment requires the company to give notice to members and others as in the case of the original meeting, it shall not be necessary to give notice of an adjourned meeting or the business to be conducted thereat.

(3) When a resolution is passed at an adjourned meeting the resolution shall for all purposes be deemed to have been passed on the date on which it was in fact passed at the adjourned meeting, and where a resolution is passed on a poll conducted subsequent to the meeting at which the poll was demanded it shall be deemed for all purposes to be passed on the date on which the poll was taken and not on any earlier day.

(4) A continuation of a meeting which has been suspended for the purpose of taking a poll shall not be considered as an adjournment of that meeting.

(5) The chairman of a meeting shall put to the meeting for consideration as an ordinary resolution any proposal by a person entitled to attend and vote at such meeting, or the proxy of such person, that the meeting be adjourned, and any such resolution may direct that notice of the adjourned meeting be given as in the case of the original meeting save that the resolution may prescribe a lesser period of notice than that required for the original meeting.

Application
to class
meetings

86. The provisions of sections 71 to 85 shall so far as practicable apply *mutatis mutandis* to class meetings but so that the necessary quorum shall be 1 member of the class present in person or by proxy if there are not more than 2 members of the class, or in any other case 2 members present in person or by proxy holding not less than one-third of the total voting rights of that class, and 1 member of the class may demand a poll.

Registration
of
resolutions

87. (1) A certified copy in legible form acceptable to the Registrar of every special resolution and of every ordinary resolution referred to in subsection (2) (together with any agreement or

other document referred or exhibited to or with any such resolution) shall be delivered to the Registrar for registration within 14 days of the date on which it is passed or deemed to have been passed and such copy shall indicate whether it has been passed at a general meeting or pursuant to section 89, and any special or ordinary resolution a copy of which requires to be registered under this subsection shall have no validity or effect unless it is so delivered for registration within the said period of 14 days which shall be evidenced by the Registrar's official receipt and shall when so registered have effect as from the date on which it was passed or deemed to have been passed or from such other date as the resolution shall itself specifically provide, but so that any resolution which is required to be registered under this section and is not lodged with the Registrar and registered by him within 6 weeks from the date on which the resolution was passed or was deemed to have been passed shall, unless the Court otherwise directs, lapse and have no effect, subject always to subsection (4).

(2) The following ordinary resolutions shall require a copy to be delivered to the Registrar pursuant to subsection (1):—

- (a) a resolution to increase the borrowing powers of the company; and
- (b) a resolution to remove a director; and
- (c) a resolution to terminate the service agreement of any director holding executive office or to vary the terms of any such agreement; and
- (d) a resolution to issue shares to any director or his associates; and
- (e) a resolution to approve any employee profit sharing scheme; and
- (f) a resolution to capitalise profits and issue fully paid shares; and
- (g) a resolution to approve any contract or arrangement in which a director of the company has an interest.

(3) A copy of every resolution required by this section to be registered shall be annexed to or embodied in every copy of the Articles of the company issued after the date of the passing of the resolution, and where a special resolution has been passed at any meeting after having been duly amended at such meeting the company shall within 14 days of the passing of the resolution send to every member of the company not present at the meeting either in person or by proxy a copy of such amended special resolution.

(4) If the company make default as regards compliance with

this section every officer in default shall be liable to a fine not exceeding \$50 for every day during which the default occurs and if any resolution so required to be registered under this section is not delivered to the Registrar for registration within the said period of 14 days the Registrar may, subject to subsection (5), accept the resolution for registration out of time on payment to him of a late filing fee at the rate of \$5 for each day by which the copy resolution is out of time for registration, and the auditor of the company shall surcharge for such late fee jointly and severally as a debt due to the company by such persons who were directors of the company on the day following the date of the passing of the resolution, unless the Court on the application of any director exempts him from such surcharge by reason of any special circumstances.

(5) The Registrar may refuse to accept for registration any resolution so lodged with him, except upon an order of the Court, if such resolution appears to be contrary to the provisions of this Ordinance or of the Articles of the company to which it relates, and every resolution which requires to be registered pursuant to this section shall have endorsed on the copy of the resolution delivered for registration the date of the order of the Court authorising such resolution.

(6) Where any intended resolution may only properly be passed pursuant to prior specific authority being contained in the company's Articles the company may at the same meeting or on the same occasion pass a separate resolution confirming the authority prior to passing the intended resolution.

Minutes

88. (1) Every company shall cause minutes of all proceedings at general meetings and meetings of any class of members and minutes of all meetings of directors to be recorded within 7 days after the date on which the meeting was held and kept in a book or books kept for the purpose and every minute recording proceedings at a directors meeting shall specify the directors in attendance and the manner in which they voted on propositions submitted to the meeting.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings took place, or the chairman of the next succeeding meeting, shall be *prima facie* evidence of the proceedings, and where minutes have been made in accordance with the provisions of this section then, unless the contrary is proved, the meeting shall be deemed to have been duly convened, held and conducted.

(3) If a company fails to comply with subsection (1) the secretary of the company and every director who concurs in his default shall be liable to a fine not exceeding \$500.

(4) The books containing the minutes of meetings of members or class meetings shall be kept at the registered office of the company and every member shall have a similar right to inspect such minute books and to obtain copies as is conferred by section 24 in respect of the register of members, and the relevant provisions of that section shall *mutatis mutandis* apply.

(5) The company shall produce to any Inspector appointed under section 122 and to its liquidator on demand every minute book which is required to be kept under this Ordinance, and the Court in relation to its consideration of any matter affecting the company may demand similar production.

(6) In making his report pursuant to section 63, the auditor of a company shall state whether or not minutes of all proceedings at meetings of the company, every class of its members and its directors have been properly kept.

89. The Articles of a public company may provide that a resolution in writing signed by or on behalf of all persons for the time being entitled to receive notice of and to attend and vote at general meetings of a company shall, for the purposes of this Ordinance and the Articles of the company, be treated as a resolution duly passed at a general meeting of the company and, where relevant, as a special or ordinary resolution so passed. Written resolutions

Provided that this section shall not authorise a written resolution in relation to any resolution to remove a director from office under section 93 or a resolution to appoint a person as auditor in place of an existing auditor under section 64, and a copy of the written resolution shall be sent to the auditors of the company not less than 48 hours before the date on which the resolution is to be passed.

DIRECTORS

90. (1) For the purposes of this Ordinance the expression "directors" means those persons, by whatever name called, who are appointed to direct and administer the business of the company. Definition

(2) Any person, not being a duly appointed director of a company—

(a) who shall hold himself out or knowingly allow himself to be held out as a director of that company; or

(b) on whose directions or instructions the duly appointed directors are accustomed to act,

shall be subject to the same duties and liabilities as if he were a duly appointed director of the company:

Provided that nothing in this subsection contained shall be deemed to derogate from the duties or liabilities of the duly appointed directors, including the duty not to act on the directions or instructions of any other person, and a person shall not be deemed to be a director for the purpose of this Ordinance by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) If any person not being a duly appointed director of a company shall hold himself out or knowingly allow himself to be held out as a director of the company, or if the company shall hold out such person or knowingly allow such person to hold himself out as a director of the company, such person or the company, as the case may be, shall be liable to a fine not exceeding \$1,000.

(4) For the purposes of subsections (2) and (3), a person who is described as a director of a company, whether such description is qualified by the word "local", "special", "executive" or in any other way, shall be deemed to be held out as a director of that company.

Number and
appointment

91. (1) Every company shall have at least 2 directors and the Articles of the company shall prescribe a maximum and minimum number (not being less than 2) of directors.

(2) In the case of a local company the minimum number of directors specified pursuant to subsection (1) shall comprise at least 2 persons resident in Kiribati.

(3) A company which is not a local company shall not be required to have its prescribed minimum number of directors resident in Kiribati so long as it shall have at least 1 director so resident.

(4) No person shall be appointed a director of a company unless he shall, prior to his appointment, have consented in writing to his appointment and such consent in writing shall be affixed to the register of directors required to be kept by the company under this Ordinance.

(5) The first directors of a company shall be named in its Articles presented to the Registrar on application being made to incorporate the company.

(6) No body corporate, or minor shall be capable of being appointed a director of a company.

(7) No person disqualified by virtue of section 118 shall be capable of being appointed a director of a company.

(8) The Articles of a company shall prescribe the procedure to be adopted by the company relating to the appointment of directors subsequent to the first directors and relating to the retirement of directors, and such Articles may provide for election of directors by cumulative voting:

Provided that, save in the case of a private company, the term of office of a director shall not extend—

(a) (other than a director appointed to an executive office under sections 94 or 95) if he was appointed or re-appointed by the company in general meeting, beyond the end of the third Annual General Meeting commencing next after the date of his appointment or re-appointment; and

(b) if he was appointed by the directors, beyond the end of the Annual General Meeting commencing next after the date of his appointment.

(9) The election of 2 or more persons as directors shall be voted upon separately except where cumulative voting is permitted.

(10) If at any time the number of directors of a company is reduced below the minimum number prescribed by the Articles of the company or this Ordinance, unless the continuing directors or director fill the vacancy or vacancies to restore the number of directors to the said prescribed minimum number within 14 days of the date on which the reduction occurs then any continuing director, or the secretary of the company, or any member of the company, may at any time thereafter apply to the Registrar to make a Protection Order in respect of the company, and the provisions of section 25 shall thereupon *mutatis mutandis* apply save that, where a company carries on business after the expiration of the said period of 14 days, every member of the company (other than a member who shall have applied to the Registrar as aforesaid or a member who can show that he was not aware of the fact that the company was carrying on business with less than the minimum number of directors) and every continuing director shall be jointly and severally liable for all debts and liabilities incurred after the expiration of the said period of 14 days until the date of the Protection Order.

(11) Where the number of directors of a company is reduced

below the minimum number prescribed by the Articles or this Ordinance any continuing director shall not resign office unless and until a successor to him is appointed or the number of directors is restored to the prescribed minimum.

(12) Where the directors appoint any person to be a director they shall not so appoint unless they have taken reasonable steps to satisfy themselves that the appointee is a person of integrity and suitable to be a director of the company, and shall in the exercise of their power to so appoint act in the interests of the company, its members and its employees.

Directors'
share
qualifications

92. (1) Unless the company's Articles otherwise provide, a director need not hold any shares of the company, but a director who is not a shareholder shall be entitled to attend and speak at all general meetings of the company.

(2) Where the Articles of a company require a director to hold shares of the company every director shall obtain his share qualification within 2 months of his appointment, and his office shall be vacated at the expiration of such period if he shall fail to do so or if at any time thereafter he ceases to hold his share qualification.

(3) Where a director vacates office under the provisions of subsection (2) he shall not be eligible for further appointment as a director of the company unless and until he obtains the share qualification current at the time of his proposed re-appointment.

(4) Where the Articles of a company are altered so as to increase the share qualification for a director any director holding office shall not vacate office by reason only of his failure to obtain the increased share qualification.

(5) Where the Articles of a company prescribe a share qualification for a director the shares must be held by the director as sole holder and beneficially and not as nominee for any other person, and every director in respect of whom a share qualification is required shall deliver to the company a statutory declaration affirming that he is the beneficial owner of the requisite number of shares registered in his name:

Provided that a director with the consent of any shareholder or holders who hold the requisite number of shares prescribed as a share qualification for a director shall be deemed to hold his share qualification if and so long as he designates to the company the shares held by the member or members who have consented to such designation and the consent in writing of such member or members is delivered to the company and has not been with-

drawn or lapsed by virtue of any transfer of the shares without a fresh consent being delivered to the company.

(6) For the purpose of any provision requiring a director to hold any share qualification the bearer of a share warrant shall not be deemed to be the holder of the shares comprised in the warrant.

93. (1) A company may by ordinary resolution at any general meeting remove from office any of the directors notwithstanding anything in its Articles or in any agreement with any director.

Removal and
vacation of
office of
directors

(2) A resolution for removal of a director may be contained in any resolution or requisition delivered to the company under the provisions of section 73 or 77 or may be included at the instance of a resolution of the directors in any notice convening a general meeting of the company:

Provided that not less than 21 days before sending such notice to the members the directors shall have given notice in writing to the director whose removal is proposed of their intention to include such a resolution in the notice of the proposed meeting and any such resolution, requisition or notice must be accompanied by a statement stating the reasons for the proposal.

(3) Whenever a company receives a resolution or requisition under section 73 or 77 which includes a resolution for removal of a director a copy of the resolution or requisition and the accompanying statement of reasons shall be given to the director whose removal is proposed within 7 days of its receipt, together with an intimation from the directors of the date when notices convening the meeting are to be sent out to the members, and notices calling the meeting shall not be despatched to the members earlier than 14 days after such delivery of a copy of the resolution or requisition to such director.

(4) A director in respect of whom a resolution is to be proposed for his removal from office shall be entitled—

- (a) to be heard on the resolution at the meeting (whether or not he is entitled to vote at the meeting); and
- (b) to require the company to send with the notice convening the meeting copies of any written representations made by the director in respect of the proposal (such written representations to be received by the company not later than 7 days after notification to the director of the proposal to submit a resolution for his removal) and to read out such written representation at the meeting:

Provided that copies of the representations need not be sent out by the company and need not be read out if the Court, on the application of the company or any person who claims to be aggrieved, made within 7 days of the receipt of the representations, is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the applicant's costs on any application under this section to be paid by the director making the representations.

(5) A vacancy created by the removal of a director under this section, unless filled at the meeting at which he is removed, may be filled by the directors as a casual vacancy, but so that any director so removed may not be appointed by the directors to fill such vacancy, or as an addition to the board, until after the next following Annual General Meeting.

(6) Any person appointed to be a director as a replacement for a director who is removed from office at the meeting at which such director is removed shall, for the purpose of determining the time at which he or any other director is to retire by rotation under the Articles of the company, be treated as if he had become a director on the day on which the person he has replaced was appointed or last appointed a director, whichever is the later.

(7) If a director who is removed from office under this section is a managing director or other executive director of the company, he shall on such removal *ipso facto* also be removed from office as managing or other executive director without any separate resolution or other action by the company being necessary.

(8) Nothing in this section shall deprive any director who is removed from office of compensation or damages payable to him in respect of the termination of his office as a director or of any appointment, office or employment under the company which terminates with his ceasing to be a director, or be construed as derogating from any other power which may exist to remove a director or to terminate any such appointment, office or employment.

(9) It shall be invalid to provide in the Articles of a company that upon a poll in connection with a resolution to remove a director from office any share or shares shall confer enhanced or additional voting rights or shall have reduced or lesser voting rights.

(10) The office of director shall be vacated if the director becomes a person who would not be capable of being appointed a director under section 91 or if he ceases to hold office by virtue of

section 92 or if he shall be removed from office under this section or if he resigns his office by not less than 3 months' notice in writing to the company, but so that the Articles of the company may provide for the company to accept a resignation on less than 3 months' notice and such Articles may also provide for the termination or vacation of office in circumstances additional to those specified in this subsection.

94. Unless the company's Articles otherwise provide and subject as provided in this Ordinance— Executive directors

- (a) a director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the office of director; and
- (b) subject as provided in paragraph (e), the directors may from time to time appoint 1 or more of their number to such other office or place of profit for such period, not exceeding 5 years, and upon such terms as they may determine, and, subject to the terms of any specific agreement in writing entered into in any particular case, may revoke any such appointment; and
- (c) such other office or place of profit may be remunerated by way of salary, commission, share of profits, participation in pension and retirement schemes, or partly in one way and partly in another, as the directors may determine; and
- (d) in exercising their powers under this section the directors shall at all times act *bona fide* in the interests of the company and shall in the resolution making the appointment or in any agreement relating to such appointment specify the particular duties and responsibilities of such director and any specific events on the happening of which the appointment may be terminated, and in determining the amount of remuneration to be payable in respect of such appointment shall satisfy themselves that the amount of the remuneration is fully related to the services to be rendered by the appointee; and
- (e) any appointment to executive office many pursuant to this section shall be subject to specific ratification by the company at the next following Annual General Meeting with the notice convening such meeting containing details of the appointment and the appointee, its proposed tenure, the specific powers to be exercisable by the appointee and the remuneration payable therefor, and where any such appointment is not so ratified any remuneration properly paid in respect of such appointment prior to such ratification shall not be recoverable, and the directors may

not appoint the appointee to any other executive office except with the previous approval of the company in general meeting, and on any resolution to ratify or approve as aforesaid the votes exercisable by the appointee shall be disregarded; and

- (f) a director who has been appointed to some other office or place of profit under the company and whose appointment has been ratified as aforesaid, shall during the currency of his appointment not be liable to retirement by rotation, or be taken into account in determining the number of directors to retire by rotation, but shall retire as a director at the Annual General Meeting next following the date on which his appointment to executive office has expired and shall be eligible for re-election as a director and for any re-appointment of him to such executive office to be ratified for a further period not exceeding 5 years and any such appointment may be continued and ratified by the company for successive periods each of which shall not exceed 5 years; and
- (g) where a director has been appointed by the directors to fill a casual vacancy, or as an addition to the board of directors, is, prior to the Annual General Meeting at which he would under the Articles of the company retire and be eligible for re-election, appointed by the directors to an executive office and his appointment to such office is not ratified at such meeting, such director shall vacate office as a director unless the company in general meeting shall re-appoint him as a director and shall not be eligible for re-appointment as a director by the directors until the expiration of at least 1 year after such vacation of office; and
- (h) the appointment of an executive director shall automatically be determined if the holder of the office ceases from any cause to be a director, and, unless the cessation is caused by the director ceasing to be a director by virtue of resignation or ceasing to hold any requisite share qualification or by virtue of an order made under section 118, or any agreement entered into in any particular case otherwise provides, such determination shall constitute a breach of the agreement with the company giving rise to damages for loss of office; but where an executive director is not confirmed in his appointment as a director at the Annual General Meeting next following his appointment or his appointment to executive office is not ratified as aforesaid no action for damages shall arise, and if a com-

pany omits to hold its Annual General Meeting the executive director shall cease to hold such executive office on 31 December of the year in which the said Annual General Meeting should have been held, and no compensation for loss of office shall be payable.

95. (1) The directors of every company may from time to time appoint 1 or more of their number to the office of managing director and to any such appointment all the provisions of section 94 shall *mutatis mutandis* apply. Managing directors

(2) The directors may delegate and entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and with such restrictions as they think fit and either collaterally with or to the exclusion of their own powers and from time to time revoke or vary all or any of such powers:

Provided that a managing director may not have delegated to him—

- (a) the power to borrow; or
- (b) the power to issue shares; or
- (c) the power to declare any interim dividend; or
- (d) power to appoint a director.

(3) In delegating any of their powers to a managing director on an appointment made pursuant to this section the directors shall be mindful of their duties under section 101 (1) (g).

96. (1) In this Ordinance the expression "directors' fees" shall mean remuneration paid to a director not being remuneration paid in respect of any other executive office under section 94 or 95. Directors' remuneration

(2) The amount to be paid to each director by way of directors' fees shall be specified in the Articles of the company:

Provided that, notwithstanding the provisions of section 20 whereby a special resolution is required for alteration of the Articles, the company at any Annual General Meeting may pass an ordinary resolution to vary the amount so specified and any such variation shall take effect from the commencement of the financial year of the company next following the date of the passing of any such ordinary resolution, or, if the resolution so provides, from the commencement of the financial year of the company during which the Annual General Meeting is held, and on any such ordinary resolution the votes of each relevant director shall not be counted.

(3) Directors' fees shall be deemed to accrue from day to day and the directors shall also be entitled to be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of directors or any general meeting or class meeting of the company or otherwise in connection with the business of the company, and if the auditors of the company shall be of opinion that any sum which has been paid to a director or former director on account of such expenses is excessive, or has not been properly incurred, such sum shall become immediately repayable to the company on the auditors informing the company and the director or former director in writing of their opinion, and if any such excess is not repaid the directors of the company at the time when the payment was made shall be jointly and severally liable to reimburse the company for such excess.

(4) Any director of a company (in this subsection referred to as "the principal company") who is also a director of any other company which is a subsidiary company or associated company of the principal company shall, notwithstanding any provision in the Articles of the principal company or such subsidiary or associated company, not be entitled to receive for his own account any directors' fees or other remuneration paid by such subsidiary or associated company, but such fees or other remuneration shall be paid to and received by the principal company which has provided to the subsidiary or associated company the services of its director.

Provided that any expenses properly payable by any such subsidiary or associated company to any of its directors shall be receivable by the director of the principal company in his own right and the principal company in general meeting by ordinary resolution, in respect of which the votes of the relevant director shall be ignored, may authorise the payment of any such directors' fees or other remuneration in whole or in part, and the provisions of section 94 (f) as to ratification of any contract or agreement as to appointment to executive office shall in the case of any appointment by a subsidiary or associated company of a director to executive office under the terms of a contract or agreement where the appointee is a director of the principal company require additional ratification by the principal company in general meeting.

Loans to
directors

97. (1) Subject to the provisions of this section, it shall not be lawful for a company to make a loan to any person who is a director of the company or of any company which is the controlling company of the company or a subsidiary or associated com-

pany of the company, or to enter into any guarantee or to provide any security in connection with a loan made to such director by any other person:

Provided that this section shall not apply to a private company if all the members of the private company agree in writing to the making of any such loan or the entry into any such guarantee or the provision of any such security and also agree to jointly and severally compensate the company for any loss it may suffer in consequence of the transaction.

(2) Subsection (1) shall not apply—

- (a) subject to the provisions of subsection (3), to any loan made or guarantee given to provide any director with funds to meet expenditure incurred by him for the purposes of the company concerned or for the purpose of enabling him to properly perform his duties as a director of that company; or
- (b) in respect of anything done upon the usual commercial terms and conditions in the ordinary course of the business of a company actually carrying on the primary business of lending money or the giving of guarantees in connection with loans made by other persons.

(3) No loan shall be made, nor shall any guarantee be given or security be provided by virtue of the provisions of subsection (2)

(a) except—

- (a) with the prior approval of an ordinary resolution in respect of which the votes of the relevant director shall be ignored, and the amount of the loan, or the extent of the guarantee or security, and the purposes of the proposed expenditure, are disclosed to the members; or
- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next Annual General Meeting of the company the loan shall be repaid, or the liability under the guarantee or security shall be discharged, within 6 months from the conclusion of that Annual General Meeting, or, if no such meeting be held within the period fixed by section 70, by 31 December of the year in which such a meeting should have been held.

(4) Any directors of a company who authorise or knowingly permit or are parties to a contravention of this section shall be jointly and severally liable to indemnify and compensate the company against any loss arising therefrom and every such director shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or both.

Management
agreements

98. (1) It shall not be lawful for the directors of a company on behalf of the company to enter into or to cause the company to enter into any management agreement except with the approval of a special resolution of the company, and any such agreement shall not extend beyond 3 years, but at the end of such period may, with like approval, be renewed for a further period not exceeding 3 years and successively for further periods not exceeding 3 years.

Provided that the Articles of the company delivered to the Registrar prior to the incorporation of the company may refer to a management agreement intended to be entered into upon incorporation and any such agreement need not be approved by special resolution but may not extend beyond the said period of 3 years but may be renewed and further renewed as aforesaid.

(2) Where a special resolution is to be proposed to approve the entering into by the company of a management agreement the notice convening the meeting shall contain full particulars of any association which any director of the company has with the persons with whom the agreement is to be entered into and shall contain a concise summary of the principal terms of the agreement and the duties to be undertaken thereunder, and shall specify that a copy of the agreement may be inspected at the registered office of the company.

(3) For the purposes of this section, a management agreement shall be an agreement whereby the person with whom the agreement is entered into undertakes to manage the whole, or a substantial part, of the business of the company or, if the company carries on 2 or more businesses, of the whole or a substantial part of any of them.

(4) Where a management agreement is entered into pursuant to this section the directors shall be mindful of their duties under section 101 (1) (g).

(5) A copy of every management agreement entered into by a company under this section shall be delivered to the Registrar for registration within 14 days of the meeting at which it is approved and in default shall be void, and on any variation or termination of any management agreement notice thereof shall be given to the Registrar by the company within 14 days of such variation or termination and in default any such variation shall have no effect.

(6) Any variation in the terms of a management agreement entered into under this section shall require to be approved by special resolution and the foregoing provisions of this section shall *mutatis mutandis* apply as regards the procedure to be adopted in respect of any such variation.

99. In addition to any other restriction which the Articles of a company may impose on the exercise by the directors of their powers to manage the business of the company, the directors of a company shall not, without the approval of an ordinary resolution of the company—

Limitation on powers of directors

- (a) sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking or assets of the company; or
- (b) issue any new or unissued equity shares of the company unless the provisions of section 36 have been complied with; or
- (c) in the case of a public company, exercise the company's power to borrow money or to charge any of its assets where the amounts to be borrowed or secured, together with the amount remaining undischarged of moneys borrowed or secured (apart from temporary borrowings in the ordinary course of the company's business from its bankers), will exceed twice the issued capital and reserves of the company:

Provided that no resolution shall be effective as approving such a transaction as is referred to in this section unless full particulars of the proposed transaction are given to the members of the company in or with the notice convening the meeting at which the resolution is to be proposed, including a statement as to whether or not any director of the company is interested in the proposed transaction and the extent of any such interest.

100. (1) A director shall not without the consent of an ordinary resolution of the company, in respect of which the votes of the director shall be disregarded, place himself in a position where his duty to the company conflicts, or may conflict, with his personal interests, or his duties to other persons, and in particular, without such consent, a director shall not—

Conflicts of duty and interest

- (a) use for his own advantage any money or property of the company or any confidential information or special knowledge obtained by him in his capacity of director, either during his term of office or thereafter; or
- (b) be interested, directly or indirectly (otherwise than merely as a shareholder or debenture holder in a public company holding not more than 1 per cent of the share or loan capital of such company), in any business which competes with that of the company; or
- (c) be personally interested, directly or indirectly, in any con-

tract or other transaction entered into by the company except as provided by section 102.

(2) Any director who acts in contravention of this section shall be liable to account to the company for any profit made by him in consequence of any such act or to compensate the company for any loss or damage suffered by the company.

Duties of
directors

101. (1) Each director of a company stands in a fiduciary relationship towards the company and it shall be the duty of the directors of a company—

- (a) to exercise their powers in accordance with this Ordinance and within the limits and subject to the conditions and restrictions imposed by the Articles of the company, and not without such consent as is required by this Ordinance or by the Articles of the company to exceed such powers or to exercise such powers for a purpose different from that for which such powers were conferred; and
- (b) to observe the utmost good faith towards the company in any transaction with it or on its behalf and to act honestly and use reasonable diligence at all times in the exercise of their powers and the discharge of their duties in the interests of the company as a whole so as to preserve its assets and further its business and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances; and
- (c) to transfer forthwith to the company all cash or other assets acquired on its behalf or of which he becomes possessed and until such transfer is effected to hold such cash or assets on behalf of the company and to use such cash or assets only for the purpose of the company; and
- (d) not to use any assets of the company for any illegal or improper purpose and not to do or allow to be done anything whereby the company's assets may be damaged or lost (otherwise than in the ordinary course of carrying on the business of the company); and
- (e) to attend all meetings of the directors unless prevented from so doing by illness or other reasonable excuse; and
- (f) to ensure that the company and its officers, agents and employees comply with all the provisions of this Ordinance and also comply with all statutory and customary standards of quality and service to customers of the company and others with whom it has dealings, and to provide properly for the welfare and safety of the employees of the company; and

- (g) where any of the powers of the directors are delegated to any 1 or more of them, or to any other person, to secure that such delegation is subject to adequate supervision for the purpose of ensuring that there is no abuse of such delegation and that regular and proper account is rendered to the directors of the conduct by the person to whom any powers have been delegated; and
- (h) to ensure that no liability is incurred by the company unless there is reasonable expectation that in the ordinary course of its business the company will be able to fully discharge such liability; and
- (i) where the company has any subsidiary company to ensure that the directors of that company conduct the affairs of that company to the utmost of their ability without loss or detriment to the company.

(2) In carrying out their duties under this Ordinance the directors may have regard, in the interests of the company as a whole, to the interests of employees as well as members of the company, and when appointed by, or as representatives of, a special class of members, employees or creditors may give special, but not exclusive, consideration to the interests of that class, and they may also have regard to the interests of the public in Kiribati.

(3) This section shall have effect in addition to and not in derogation from any other enactment or rule of law relating to the duty or liability of a director or officer of a company.

(4) No provision, whether contained in the Articles of a company or in any contract or in any resolution of a company, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach thereof.

102. (1) A director who is in any way directly or indirectly interested in any contract or proposed contract entered into or to be entered into by or on behalf of the company (whether or not a contract specifically coming into consideration at a meeting of directors) shall declare the nature and extent of his interest to the other directors as soon as practicable on his becoming aware of the contract or proposed contract, or, where he has acquired an interest after any contract has been entered into before the termination of such contract, after completion of the acquisition of his interest.

Contracts in which directors are interested

(2) A general notice in writing given to the directors of the company by a director to the effect that by reason of facts

specified in the notice he is to be regarded as interested in any contract which may, after the date of such notice, be made by the company shall be deemed for the purposes of this section to be a sufficient declaration of his interests so far as attributable to those facts in relation to any contract or proposed contract so made or to be made: but no such general notice shall have effect in relation to any contract unless it is given before the date on which the question of entering into the contract is first taken into consideration on behalf of the company.

(3) Unless otherwise provided in the company's Articles, any director may act by himself or his firm in a professional capacity for the company, except as auditor, and he or his firm shall be entitled to proper remuneration for professional services as if he were not a director, but so that a company may not, without the sanction of a special resolution in respect of which the votes of the director shall not be counted, enter into any contract for services with such director or his firm which may extend beyond a period of 3 years but so that such contract may with like sanction be renewed for successive periods not exceeding 3 years.

(4) Save in the case of a private company which has only 2 directors, a director shall not vote in respect of any contract or arrangement in which he is interested and if he does so vote his vote shall not be counted nor shall he be reckoned in counting the quorum required at the meeting at which the contract or arrangement is discussed.

(5) Any director who is the holder of any executive office under the company may not on behalf of the company in the exercise of any authority vested in him enter into any contract in which he, or to his knowledge any director of the company or any associated company, is directly or indirectly interested unless the directors have resolved that the contract be entered into by him on behalf of the company.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

(7) A copy of every declaration made and general notice given in pursuance of this section shall within 3 days after the making or giving thereof be entered in a book to be kept by the company and such book shall be available for inspection without charge by any director, secretary, auditor, legal adviser or member of the company at its registered office or other place where the books of a company are under this Ordinance kept and shall be produced at every general meeting of the company, and also at any direc

tors' meeting upon request being made by any director not less than 3 days prior to such meeting.

(8) Any director who fails to comply with the provisions of this Ordinance, and any officer of the company who causes the company to so fail to comply, shall on conviction be liable to a fine not exceeding \$1,000, and the Court may as regards any breach of subsection (7) as to production of the book therein referred to order the breach to be remedied forthwith.

(9) For the purpose of this section, the interest of any director in a public company as the holder of not more than 1 per cent of the shares or any class of shares or loan capital of such company may be disregarded.

(10) The report of the directors required pursuant to section 68 shall have attached thereto a statement giving particulars of and itemising all contracts entered into by the company during the financial period to which the report relates, being contracts in which any director has declared an interest under this section, and the auditors of the company shall certify the correctness of such statement.

103. (1) It shall not be lawful for any company to make to any director or former director of the company or of any associated company any payment or transfer of property by way of compensation for loss of any office in the company or any associated company or as consideration for or in connection with his retirement from office without particulars in respect of the proposed payment or transfer (including the amount or value thereof) being disclosed to the members of the company and the proposed payment or transfer being approved by ordinary resolution of the company, and for the purpose of calculating the number of votes in favour of such resolution the votes of the director or former director concerned shall be disregarded.

Compensation
for loss of
office

(2) It shall not be lawful for any payment or transfer of property to be made whether by the company or otherwise to any director or former director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company or any associated company, whether such payment or transfer is expressed to be by way of compensation for loss of office or otherwise, unless particulars with respect to the proposed payment or transfer are disclosed to the members of the company and the proposed payment is approved in similar manner as is provided in subsection (1).

(3) If any payment or transfer shall be made in contravention of this section the person to whom the payment was made shall

reimburse the company to the full value thereof together with interest at the rate of 20 per cent per annum, and in default the directors of the company at the time the payment or transfer was made shall be jointly and severally liable to reimburse the company.

Payments to
directors in
connection
with take-
over bids

104. (1) Where an offer is made for the acquisition of the shares of a company on the terms that the same is available for acceptance by all the holders of the shares of the class to which the offer relates, or by the holders of shares which together with the shares owned by the offerer confer the right to exercise or to control the exercise of not less than one-third of the voting power at any general meeting of the company, and in connection with such offer it is proposed that a payment shall be made or benefit conferred, or where a payment has been made or benefit has been conferred, to or on a director or former director of the company or of any associated company over and above the receipt by him in respect of any shares in the company held by him of the same price receivable by the other holders of the shares of the same class, it shall be the duty of the director or former director to take all reasonable steps to secure that particulars of the payment or benefit are included in the notice of the offer.

(2) Unless the requirements of subsection (1) are complied with and the additional payment or benefit is paid or conferred before the transfer of any shares in pursuance of the offer is completed and approved by an ordinary resolution of the holders of the shares to which the offer relates (on which resolution the votes of the holder or holders to whom the additional payment or benefit is to be granted, shall be disregarded), such additional payment, together with such sum as the auditors of the company shall certify to represent the monetary value of such benefit, shall be distributed in the manner provided by the next succeeding subsection of this section.

(3) Where a payment or monetary sum representing benefit is to be distributed as provided in subsection (2), the persons making or proposing to make such payment or confer such benefit, and the director or former director to or on whom it is made or conferred or proposed to be made or conferred, shall jointly and severally be liable to distribute the payment and the said monetary sum among all persons who have sold their shares in consequence of the offer in proportion to the number of shares sold by them, and if any director or former director shall receive any such payment he shall hold the same on trust for such persons and the expenses incurred in effecting such distribution shall be borne by the persons liable to make the distribution and shall not be

deducted from or retained out of the payment, but if in any proceedings instituted prior to the expiration of 6 months from the first transfer of any shares in pursuance of the offer the Court shall award or approve the payment of damages to such director or former director for breach of any valid service agreement, the amount of such damages (but not any costs or expenses in connection with such proceedings) shall be paid to or retained by the director or former director out of such payment and only the balance thereof, if any, shall be distributable as aforesaid.

(4) It shall not be lawful for any offer to purchase shares to which the provisions of this section apply to be expressed to be conditional upon approval of a payment or proposed payment to a director or former director, and any such condition shall be void.

(5) Any general meeting held for the purpose of approving any payment or proposed payment under this section shall be convened, held and conducted as if it were a duly convened general meeting of the company and the provisions of this Ordinance and of the company's rules as to general meetings shall *mutatis mutandis* apply to any such general meeting with the addition that the notice convening the meeting shall state that if the resolution is not passed the payment referred to in the notice will be distributable among the persons who have sold their shares in pursuance of the offer save for the deductions permitted under subsection (3).

105. (1) For the purposes of sections 103 and 104, the expression "payment" includes any benefit or advantage whether in cash or in kind.

Provisions
supplemental
to sections
103 and 104

(2) Sections 103 and 104 shall not render unlawful or apply to the payment of damages awarded or approved by the Court for breach of any valid service agreement or the *bona fide* payment of any pension or superannuation benefit in respect of past services in accordance with a valid service agreement or under the rules of an approved pension or superannuation scheme.

(3) For the purpose of this Ordinance a valid service agreement shall not be deemed to be valid unless it shall have been approved by the company in general meeting pursuant to section 94 at an Annual General Meeting held more than 1 year before the date on which the transfer or offer referred to in section 103 or 104 is made unless the director concerned can prove that at the time of such approval the directors of the company had not entered into any negotiations with the person who made the offer or to whom the transfer was made or with any other person or

persons generally for such a transfer or offer to be made, and any payment (not being remuneration or expenses properly paid to a director) received by a director or former director within a period of 1 year before or 2 years after the date of the agreement to make such transfer or the making of such an offer shall be deemed to have been received by him in connection with such transfer or offer if the company or the person to whom such transfer or by whom such offer was made was privy to the making of the payment.

Duties of
director on
sale or
purchase of
securities

106. (1) If a director of a company, having acquired as such director any special information which may substantially affect the value of the shares or debentures of the company, or any associated company, shall buy or sell any such shares or debentures without disclosing such information to the seller or purchaser thereof, the purchase or sale shall be voidable at the option of the seller or purchaser within 12 months after the date of the agreement to sell or buy.

(2) For the purposes of this section any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if his interest therein is such as to require recording in relation to him in the register to be maintained in accordance with section 108, unless it is proved that the sale or purchase was not made by him or on his instructions or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in his capacity of director.

(3) This section shall not prejudice the right of the company to proceed against any director for breach of section 100.

Civil
liability for
breach of
duty

107. (1) Without prejudice to any penalty which may be imposed under this Ordinance for any breach by a director of his duties under sections 100 or 101, if any director commits any breach of such duties such director, and any other person who knowingly participated in such breach, shall be liable to compensate the company for any damage it suffers as a result of such breach, and such director shall account to the company for any profit made by him as a result of such breach; and the company may rescind any contract or other transaction entered into between the company and such director in breach of such duties.

(2) Proceedings to enforce the liabilities referred to in subsection (1) or to restrain a threatened breach of any of the directors' duties under sections 100 or 101 or to recover any property of the company transferred to or held by a director in breach of such duties may be instituted by the company or by any member of the

company or by the Registrar following any investigation made under sections 121 to 124.

(3) Proceedings may be instituted by the company on the authority of its directors or of any receiver and manager or liquidator or of an ordinary resolution of the company which shall either have been agreed to in writing by all members (other than the proposed defendant and his associates) holding unrestricted voting shares or passed at a general meeting, on which resolution the votes of the proposed defendant and the holders of any shares in which he has interest as defined in section 108 shall be disregarded.

(4) Where proceedings are instituted by a member the provision of section 120 shall apply.

(5) No period of limitation conferred by statute shall apply to any proceedings under this section and no provision, whether contained in the Rules of the company or any contract, shall relieve a director from any liability for any breach of his duties under this Ordinance, but the Court may relieve a director from liability in whole or part and on such terms as it thinks proper if, in all the circumstances including lapse of time, the Court thinks it equitable to do so.

(6) In any proceedings under this section the Court may order restitution in whole or in part to any member or former member of the company instead of to the company itself and for this purpose may institute such enquiries as to the identity of members or former members as it considers necessary.

(7) No proceedings under this section shall be settled or compromised except with the approval of the Court and before any such settlement or compromise is made notice of the proposed settlement and compromise shall be given to all the members of the company and the Registrar to enable any member or the Registrar to make submissions to the Court before it decides whether or not to approve the settlement or compromise.

108. (1) Every company shall keep a register in which shall be recorded information required to be given to the company by a director under the provisions of this section and the provisions of section 24 shall apply to such register as if it were a register of members but so that the only persons entitled to inspect such register, in addition to members of the company, shall be debenture holders and the Registrar.

Register of
directors'
interests

(2) Every director of a company shall give the company notice in writing of the number or amount of any securities of the com-

pany, or of any associated company, in which the director has an interest and the particulars referred to in subsection (5), and such notice shall be given within 3 days of the completion of the transaction in respect of which information has to be given or within 3 days of the director becoming aware of such transaction or in the case of a director of an existing company within 3 weeks of the date of commencement of this Ordinance or in the case of a director appointed after such date within 3 days after his appointment.

(3) For the purposes of this section a director has an interest in the securities of any company where—

- (a) any securities are registered in his name whether as sole holder or as a joint holder or in the name of a nominee for him or himself and other persons jointly; or
- (b) the director has an interest or prospective interest arising under a trust whereof the property comprises any such securities, whether such trust be a discretionary trust or otherwise; or
- (c) the director has a right to subscribe for the securities or a right to acquire the securities or any right of pre-emption relating to such securities otherwise than under the Articles of a company; or
- (d) any securities are registered in the name of a body corporate or if a body corporate has any right in or over them and such body corporate is controlled by the director; or
- (e) the securities are subject to a voting arrangement in favour of a director whereby the director may require the voting rights attached to the securities to be exercised in accordance with his directions or by which the director may require that he or some other person be appointed a proxy with power to vote in respect of such securities.

(4) For the purposes of this section the interest of a partner, spouse, son or daughter of a director shall be treated as being the director's interest and every director shall be under an obligation to take all reasonable steps to ensure that every such partner, spouse, son or daughter is made aware of his obligations under this section.

(5) The nature and extent of an interest to be recorded by virtue of this section shall be recorded in the said register.

(6) The particulars required to be recorded in the said register are—

- (a) the number, class and nominal values of any shares, and the amount of principal and any premium payable in

respect of the debentures, in which the director has an interest;

- (b) the date of the acquisition of the interest and the price or other consideration (if any) for the transaction;
- (c) the date of the disposal or cessation of the interest and the price or other consideration (if any) received for such disposal or cessation.

(7) The company shall not by virtue of this section alone be affected with notice of or put upon enquiry as to the right of any person in relation to any securities.

(8) Where any director of a company fails to observe the provisions of this section as to the giving of notice and particulars as aforesaid such director shall on conviction be liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$1,000 or both and it shall not be a defence for a director that the transaction related to the interest of any partner, spouse, son or daughter of the director of which he was not aware unless he proves to the satisfaction of the Court that he has taken all reasonable steps to inform any such person of his obligations under this section.

109. (1) Unless prohibited by the Articles of the company a director may, in respect of any period not exceeding 6 months in which he is unable for any reason to act as a director, appoint another director or any other person approved by a resolution of the board of directors, as an alternate director. Such appointment shall be in writing signed by the appointor and appointee and lodged with the company and shall take effect on lodgement with the company.

Alternate
directors

(2) Every alternate director so appointed shall for the period of such appointment be deemed for all purposes to be a director and officer of the company and not the agent of his appointor but he shall not be required to hold any share qualification notwithstanding that, under the Articles, directors may be so required, nor shall he be entitled to appoint an alternate director, nor shall he be counted as a director for the purposes of any provision of this Ordinance or the Articles relating to the minimum or maximum number of directors (other than a provision relating to a quorum).

(3) The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director, but the Articles of the company may provide that the alternate director shall be entitled to receive from the company during the period of his appointment the remuneration to which his appoin-

tor, but for such appointment, would have been entitled and that his appointor shall not be entitled to remuneration for that period; but, in the absence of such provision in the Articles, the alternate shall not be entitled to be remunerated otherwise than by the director appointing him.

(4) An alternate director who is himself a director shall have an additional vote for each director for whom he acts as alternate at every meeting of the directors.

(5) The appointment of an alternate director shall cease at the expiration of the period for which he was appointed, or if his appointor gives written notice to that effect to the company, or if his appointor ceases for any reason to be a director or if the alternate resigns by notice in writing to the company.

(6) Until the cessation of the appointment of an alternate both the appointor and appointee shall be and may act as directors of the company, but no alternate, unless a director in his own right, shall attend or vote at any meeting of the directors or any committee of directors at which his appointor is present.

(7) No person shall be appointed as an alternate director if he is not qualified for appointment as a director of the company under this Ordinance, or if he shall have at any time been removed from office as a director or shall have not been re-appointed a director upon retiring at any general meeting and offering himself for re-appointment or for his appointment to be confirmed.

Representa-
tive
directors

110. (1) The regulations may prescribe that, notwithstanding any of the provisions of the Articles of any company, certain specific companies, or any specific class of companies, shall, at the direction of the Minister, have as a member or members of their board of directors a representative or representatives of their employees, or union representing a majority of their employees, or in the public interest a representative or representatives of the Republic, and the regulations, or, subject to the regulations, the Minister, shall lay down the procedure for effecting any such appointment and the terms and conditions attaching to any such appointment and the specific duties and responsibilities (if any) of every such director and any limitation thereof; and whenever any such appointment is made notice thereof shall be published in the *Gazette* and in the "Atoll Pioneer", and the Registrar before granting approval to any prospectus relating to an offer to the public may require that the Articles of the company provide for any class of shareholders who, or any proportion of any class of shareholders, acquire shares of a company to be represented on

the board of directors on such terms as the Registrar shall consider proper.

(2) The remuneration of any director appointed pursuant to this provision shall be not less than the remuneration paid generally to the other directors of a company in respect of their services as directors, and shall in each case be payable by the company, and the regulations may impose upon a representative director the obligation to submit a report covering such matters as the regulations may prescribe for attachment to the directors' report under section 63.

(3) Where any company considers that any person whom it is proposed shall be appointed a representative director under this section has interests inimical to the interests of the company it may apply to the Court to order that another representative director be appointed and the Court may make such order as it thinks proper.

(4) A representative director so appointed shall be entitled to attend and speak at all directors' meetings of the company to which he shall be appointed but shall have no right to vote at any such meeting, and shall have the same right as any other director of the company under its Articles to convene or direct the convening of a meeting of directors, but shall not be deemed to be a director for the purpose of this Ordinance.

111. A provision in the Articles of any company or in any agreement purporting to empower a director or other officer to assign his office to another person, and any purported assignment of the office, shall be void. Assignment of office

112. Subject to any contrary provisions in the Articles of the company— Proceedings of directors

- (a) the directors may meet together in Kiribati or elsewhere for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and, subject to sections 94, 95 and 101, may delegate any of their powers to committees consisting of such member or members of their body as they think fit, but any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors; and
- (b) any director may, and the secretary on the requisition of a director shall, at any time summon a meeting of directors, and any director being a member of a committee may, and the secretary on the requisition of any such director shall,

at any time summon a meeting of the committee; and

- (c) it shall not be necessary to give notice of a meeting of directors or of a committee of directors to any director for the time being absent from Kiribati, and each meeting of directors shall be convened on not less than 3 clear days' notice unless all the directors entitled to receive such notice consent to shorter notice or to dispense with notice altogether; and
- (d) the quorum necessary for the transaction of business of the directors and of every committee of directors may be fixed by the directors and unless so fixed shall be 2; and
- (e) except as provided in paragraph (f), no business shall be transacted in the absence of a quorum notwithstanding that a quorum was present at the commencement of the meeting; and
- (f) the continuing directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed as the necessary quorum, the continuing directors or director may act for 14 days after the number is so reduced, but thereafter may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose; and
- (g) the directors and any committee of directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, those present may choose 1 of their number to be chairman of the meeting; and
- (h) questions arising at any meeting of the directors or any committee of directors shall be decided by a majority of votes, and in the case of an equality of votes the chairman shall have a second or casting vote; and
- (i) attendance and voting by proxy shall not be permitted, save where an alternate director has been duly appointed, at meetings of directors or committees of directors; and
- (j) a resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, or of a committee of directors, shall be as valid and effectual as if it had been passed at a meeting of the directors or a committee of directors duly convened and held.

113. (1) Every company shall cause minutes of all proceedings of meetings of its directors and any committee of directors to be entered in a book or books kept for the purpose. Minutes of directors' meetings

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place or of the next succeeding meeting, shall be *prima facie* evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this Ordinance then, until the contrary is proved, the meeting shall be deemed to be duly convened, held and conducted and all appointments of directors shall be deemed to be valid.

(4) The minutes of meetings of directors or of any committee of directors may be inspected by every person who was a director at the time of the meeting and by every director.

114. (1) Every company shall have a secretary and if a company shall carry on business for more than 1 month without a secretary the company and every officer of the company who concurs in the default shall be liable to a fine not exceeding \$100 for each day that the offence continues. The secretary

(2) Anything required to be done by or to the secretary may if the office is vacant, or there is for any other reason no secretary capable of acting, be done by or to any acting or deputy secretary appointed by the directors.

(3) A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as a director and as, or in place of, the secretary.

(4) The secretary may be an individual or a firm (as from time to time constituted) or any body corporate, or may be 2 or more individuals, firms or companies jointly:

Provided that where any offence under this Ordinance is committed by a firm acting as secretary all the members of such firm shall be jointly and severally liable and where a body corporate is appointed secretary of a company it shall designate 1 of its officers as the person who is deemed to be specifically charged with ensuring that such body corporate carries out its duties as secretary of the company and in the case of a joint appointment of 2 bodies corporate each such body corporate shall make a separate designation.

(5) In the case of a public company, except with the sanction of the Registrar no person shall be eligible for appointment as secretary of a public company unless he shall be a duly qualified practitioner or a chartered or certified accountant or a chartered secretary or shall have such other professional qualification acceptable to the Registrar.

(6) The secretary of the company shall be appointed by and shall hold office at the discretion of the directors who shall determine the terms as to remuneration and otherwise upon which the secretary shall hold office.

(7) The secretary of the company shall be a person resident in or carrying on business in Kiribati, save that the proviso to section 64 (4) shall *mutatis mutandis* apply where a firm is appointed secretary.

(8) In addition to any other duties imposed on the secretary of a company under this Ordinance or any other law, the secretary of a company shall attend every general meeting and every meeting of the directors and shall be responsible for the taking of minutes of every such meeting.

Register of
directors and
secretary

115. (1) Every company shall keep a register in which shall be recorded as regards each director and secretary the following particulars:—

(a) as regards each director—

- (i) his present forenames and surnames; and
- (ii) any former forename and surname; and
- (iii) his usual residential address; and
- (iv) his business occupation, if any, being an occupation additional to any position he holds with the company; and
- (v) particulars of any other directorships (other than alternate directorships); and
- (vi) particulars of any executive office to which he has been appointed pursuant to sections 94 or 95; and

(b) as regards each secretary, or where joint secretaries are appointed with respect to each of them—

- (i) in the case of an individual, his present and any former forenames and surnames and the particulars referred to in paragraph (a); and
- (ii) in the case of a firm a copy of the particulars of such firm and the principal business address of such firm; and

- (iii) in the case of a body corporate, its corporate name and registered office and the officer specifically designated as provided in section 114 (4).

(2) For the purpose of this section and of section 117, references to a surname include a name or title by which a person is usually known, but do not include any surname disused for not less than 10 years or in the case of a married woman any surname other than her maiden surname.

116. (1) Every application for incorporation of a company shall be accompanied by a return containing the particulars required to be specified in the register referred to in section 115.

Registration
of particulars
of
directors and
secretaries

(2) Every existing company shall within 14 days after the commencement of this Ordinance send to the Registrar a return giving the particulars required to be specified in the register referred to in section 115.

(3) Every company shall within 7 days after any change occurs among its directors or in its secretary or in any one of the particulars contained in the register referred to in section 115 (other than those required under section 115 (1) (a) (v)) send to the Registrar notice of such change and the date thereof and where any director or secretary resigns such director or secretary shall give similar notice to the Registrar within the like period and in default shall be deemed to continue to hold office.

117. (1) Every company shall in all written or printed publications or circulars and business letters on or in which the name of the company appears state in legible characters with respect to each director (other than an alternate director) and the secretary and any acting or deputy secretary—

Publication
of names of
directors and
secretary

- (a) his present surname and his present forenames or the initials thereof; and
- (b) any former surnames or forenames or the initials thereof; and
- (c) in the case of any director holding office as managing director or other executive office pursuant to section 94 or 95 a description of such office:

Provided that if special circumstances exist which render it in the opinion of the Registrar expedient that an exemption from any of the requirements of this subsection be granted the Registrar may by order published in the *Gazette*, at the expense of the company, subject to such conditions as may be specified in the

order, grant exemption from the obligations hereby imposed in respect of any company and:

Provided further that where the company is the wholly owned subsidiary of another company it shall suffice if this subsection is complied with as regards particulars of the secretary and there is clearly stated the name and registered number and country of incorporation (if incorporated outside Kiribati) of the parent company.

(2) If a company makes default in complying with this section the company and every officer who is in default shall be liable to a fine not exceeding \$100 for each offence.

Disqualification
of persons
guilty of
misconduct

118. (1) Where—

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company, or of any other offence his conviction of which necessarily involves a finding that he acted fraudulently or dishonestly; or

(b) a person is declared or deemed to have been declared bankrupt; or

(c) in the course of winding up a company it appears that a person—

(i) has been guilty, while an officer of the company, of reckless conduct in relation to the management of the company; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company; or

(d) it appears to the Court that a person has been persistently in breach of his obligations under this Ordinance; or

(e) a person has made any false statement in any document or notice delivered to the Registrar under this Ordinance,

the Court may make a disqualification order against that person.

(2) An application for the making of an order under subsection (1) may be made by the Registrar, the liquidator of the company or any person who is or has been a member or creditor of the company.

(3) For the purposes of subsection (1) (d), the fact that a person has been persistently in breach of his obligations under this Ordinance may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the period of 3 years ending with the date of the application he has been con-

victed (whether or not on the same occasion) of 3 or more offences under this Ordinance or has had 3 or more default orders made against him.

(4) A person intending to apply for the making of a disqualification order by the Court shall give not less than 10 days' notice of his intention to the person against whom the order is sought and to the Registrar and on the hearing of the application the person against whom the order is sought may appear and himself give evidence or call witnesses; and on the hearing of any application the applicant shall appear and call the attention of the Court to any matters which seem to him to be relevant and may himself give evidence or call witnesses.

(5) For the purposes of this section a disqualification order shall be an order whereunder the Court directs that the person named therein shall not, without the leave of the Court, be a director or in any way, whether directly or indirectly, be concerned in the management of a company or act as auditor, receiver or liquidator of any company for such period as may be specified in the order.

(6) Where application is made to the Court for leave under subsection (5), a copy of the application shall be delivered to the Registrar at the same time as it is delivered to the Court and the Registrar may appear and be heard on the application and the Court may also hear any other persons whom it considers to have an interest in the application.

PROTECTION AGAINST ILLEGAL OR OPPRESSIVE ACTION

119. (1) The Court on the application of any member may by injunction restrain a company from doing any act or entering into any transaction which is illegal or beyond the power or capacity of the company or which infringes any provisions of its Articles or from acting on any resolution not properly passed in accordance with this Ordinance and the company's Articles, and may declare any such act, transaction or resolution, entered into or passed to be void and of no effect:

Injunction or
declaration in
the event of
illegal or
irregular
activity

Provided that—

- (a) nothing in this section contained shall derogate from the protection afforded by this Ordinance to any person dealing with the company; and
- (b) in relation to acts beyond the capacity or power of the company this section shall be subject and without prejudice to the provisions of section 17; and

- (c) the right afforded to a member to apply to the Court under this section shall be without prejudice to any right he may have to institute proceedings against any director of the company under section 107 or to apply to the Court under section 120.

(2) In any proceedings by a member under this section the Court may, if it shall think fit, order that the member give security for the costs of the company, and may direct that the application be heard in chambers without publicity.

Remedy
against
oppression

120. (1) Any member or debenture holder of a company, or the Registrar, may apply to the Court for an order under this section on the ground that—

- (a) the affairs of the company, or the powers of the directors, are being exercised in a manner oppressive to 1 or more of the members or debenture holders, or in disregard of his or their interests as members, shareholders, or debenture holders of the company; or
- (b) that some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, 1 or more of the members or debenture holders; or
- (c) the affairs of the company are being conducted in a manner which is not in the interests of Kiribati.

(2) If on such application the Court is of opinion that any of such grounds is established, the Court, with a view to bringing to an end or remedying the matters complained of, may make such order as it thinks fit, and, without prejudice to the generality of the foregoing, may by order—

- (a) direct or prohibit any act or cancel or vary any transaction or resolution; or
- (b) regulate or provide for the regulation of the conduct of the company's affairs in the future; or
- (c) provide for the purchase of the shares or debentures of any members or debenture holders of the company by other members or debenture holders of the company or by the company itself; or
- (d) provide for the official winding up of the company.

(3) Where an order under this section makes any alteration or addition to any of the company's Articles, then, notwithstanding anything in any other provision of this Ordinance, but subject to

the provisions of the order, the company shall not have power, without the leave of the Court, to make any further alteration in or addition to the Articles inconsistent with the provisions of the order.

(4) An office copy of the order of court made pursuant to this section shall be placed on the file of the company and sent to every member and debenture holder of the company and to such other persons as the Court may order, and the order of court shall be binding on the company, its directors and every member and debenture holder and any other person named in the order.

(5) On any application under this section the Court may, if it thinks fit, order the applicant to give security for the costs of the company and may direct that the application shall be heard in chambers without publicity.

121. (1) Where it appears to the Registrar that there are circumstances suggesting in relation to any company (including an external company) that—

Enquiries by
the Registrar

- (a) any of the provisions of this Ordinance are not being complied with; or
- (b) any document which has been delivered to him under the provisions of this Ordinance does not disclose a full and fair statement of the matters to which it purports to relate; or
- (c) the business of the company is being conducted with intent to defraud its creditors or for a fraudulent or unlawful purpose or in a manner detrimental to the interests of its members or any of them, or of Kiribati, or in disregard of the proper rights and interests of any member or debenture holder; or
- (d) persons connected with the management of the company have been guilty of a breach of duty towards the company or its members; or
- (e) members of the company have not been given all the information with respect to its affairs that they might reasonably expect,

the Registrar may by written order call on the company to produce for his inspection all or any of the books or records of the company or to furnish in writing such information or explanation as he may specify in his order including information as to the beneficial ownership of the shares of the company.

(2) Where the Registrar makes an order under subsection (1) the company shall comply with the same within such time as shall

be specified in the order, and all persons who are or have been officers of the company or who have acted for the company in any capacity shall, so far as is within their power, produce to the Registrar such books or furnish him with such information or explanation as he may require.

(3) If a company or any other person makes default in complying with any of the provisions of this section every officer of the company and every other person who is in default shall be liable to a fine not exceeding \$1,000.

(4) Unless the books, information or explanation produced or given to the Registrar in accordance with the foregoing provisions of this section satisfy the Registrar that no further action is needed, or if a company and its officers shall fail to comply with any order made hereunder by the Registrar, application may be made by the Registrar to the Court for appointment of an Inspector under section 122 or for the Court to order the company to be officially wound up under section 129.

Appointment
of Inspector

122. (1) The Court may order that 1 or more Inspectors be appointed to investigate the affairs of a company, or of an external company as regards its operations in Kiribati, and to report thereon in such manner as the Court directs—

- (a) upon the application of the Registrar; or
- (b) upon the application of not less than 50 members or of members holding not less than one-tenth of the issued shares of a company or not less than one-tenth in number of the total members; or
- (c) upon the application of any director or former director of the company.

(2) Where the application is made under subsection (1) (b) or (c), the application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have reasonable grounds for making the application, and the Court may direct that the applicants give security to such amount as it thinks fit for payment towards the costs of the investigation, and not less than 14 days' notice in writing of the application shall be given to the Registrar, who may appear at the hearing of the application.

(3) Any applicant shall be heard in Chambers and at least 14 days' notice in writing thereof shall be given to the company, which shall be entitled to be represented at the hearing and to give evidence and to call witnesses.

(4) An order of the Court under this section directing that the

affairs of a company shall be investigated shall automatically extend to any other company or body corporate which is or has at any relevant time been the company's associated company, and the order may make directions as to the management of the business of the company and any such associated company during the investigation.

(5) It shall be the duty of all officers, employees, agents and advisers of the company, and of any associated company, whose affairs are being investigated to produce to the Inspector all books or documents of or relating to the company, or any such associated company, which are in their custody or power and in all respects to give to the Inspector such information and assistance in connection with the investigation as he shall require, and for the avoidance of doubt any reference to officers, employees, agents or advisers shall include the bankers, stock brokers, auditors and legal practitioners of the company and any person who has acted for the company in any capacity.

(6) An Inspector may examine on oath any person required ~~under subsection (5) to give him information or assistance and~~ may administer an oath accordingly, and may apply to the Court for the Court to direct that any other person whom he desires to examine, as being a person whom he has reason to believe may assist him in his investigation as a person who is or was at any time indebted to the company or any of its associated companies, or as a person to whom any property or assets of the company or any of its associated companies was transferred or with whom the company or any of its associated companies had any transaction, shall be examined by the Inspector and shall attend before the Inspector for that purpose, and any such person shall be under a similar duty to the duty imposed on officers and others as provided by subsection (5).

(7) If any person declines to attend any examination ordered by the Inspector or declines to assist the Inspector to the utmost of his ability or destroys or allows to be destroyed any books or documents which he is under obligation to produce, the Inspector shall certify the facts in writing to the Court who may punish the offender in like manner as if he had been guilty of contempt of Court, and the Court may direct that any shares in the company beneficially owned by such person and his associates shall be forfeited to the Republic.

(8) The Inspector may, and if so directed by the Court shall, make interim reports to the Court and on the conclusion of his investigation shall make a final report to the Court, and any such report shall be signed by the Inspector.

(9) The Court shall forward a copy of any report made to the company, and to the Registrar and to all persons who made application to the Court for the investigation to be made, and may also cause the report to be published and available for purchase from the Registrar, and a copy of any report authenticated by the seal of the Court shall be admissible in any legal proceedings as evidence of the opinion of the Inspector in relation to any matter contained in the report.

(10) The report of any Inspector under this section shall have absolute privilege and no action shall lie on the part of any person referred to in such report.

Expenses of
investigation

123. The expenses of and incidental to any investigation by the Registrar under section 121 or by Inspectors under section 122 shall in the first instance be defrayed out of the vote of the Registrar, but the following persons shall, to the extent mentioned, be liable to repay the Republic:—

- (a) any person who is convicted on a prosecution instituted by virtue of section 124 (a) or who is ordered to restore property or pay compensation or damages in proceedings brought by virtue of section 124 (c) and to the extent specified by the court making the conviction or order; and
- (b) any body corporate in whose name proceedings are brought by virtue of section 124 (c) to the extent of the amount or value of any sum or property recovered by it in such proceedings; and
- (c) any body corporate whose affairs have been investigated, or its directors or past directors, officers or agents to such extent (if any) as the Court may direct.

Proceedings
after
investigations

124. If as a result of any investigation made by the Registrar under section 121 or any report made under section 122 (including any interim report) it appears to the Court that—

- (a) any person may have been guilty of an offence for which he is criminally liable—the Court shall refer the matter to the Attorney-General with a view to proceedings being instituted; or
- (b) it is just and equitable that the company be wound up—the Court may order the company to be officially wound up and make such directions as to the conduct of the winding up as it thinks fit, and any such order may extend to and include any associated company of the company; or
- (c) proceedings ought in the interests of the public to be brought by any company against any director or former

director under section 117 or any other person to recover property, damages or compensation to which such company is entitled—the Court may direct the Registrar in the name of the company to institute such proceedings; or

- (d) it is just and equitable that the affairs of any company or any group of companies shall be reorganised—the Court may make such order and give such direction relating to the company and any company in such group as the Court thinks fit, with power to settle and determine as it considers just and equitable the claims and interests of members and creditors of the company and any such other company.

WINDING UP

125. (1) The winding up of a company may be either a voluntary winding up or an official winding up, and such winding up shall commence from the date on which the Registrar certifies that a copy of a special resolution to wind up has been delivered to him or, in the case of an official winding up, from the date on which the Court makes an order for official winding up.

Procedure
and general
provisions

(2) The company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for the beneficial winding up thereof, but the corporate status and corporate powers of the company shall continue until it is dissolved as provided in subsection (10).

(3) A company may be voluntarily wound up if the company by special resolution resolves that the company be wound up voluntarily and, prior to the date of such resolution, a declaration of solvency is made in accordance with subsection (4) and delivered to the Registrar for registration prior to such date and particulars of such declaration are submitted to the meeting at which the said special resolution is passed, and a copy of such declaration is available for inspection at the place of and prior to the said meeting.

(4) Where it is proposed to wind up a company voluntarily the directors, or a majority of them, (which majority must include a director resident in Kiribati) shall at a meeting of the directors make a statutory declaration in the prescribed form and such declaration shall state that they have made a full enquiry as to the affairs and financial state of the company and that, having so done, they have formed the opinion that the company will be able to pay its debts and liabilities in full within a period not exceeding 12 months of the date of such declaration. A director who makes

a declaration under this subsection without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated shall be guilty of an offence, and, if a company is wound up voluntarily and its debts are not paid or provided for in full within the period stated, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(5) A statutory declaration made as aforesaid shall have no effect for the purposes of this Ordinance unless—

- (a) the declaration is made within 5 weeks immediately preceding the date of the passing of the resolution to wind up voluntarily and is delivered to the Registrar for registration before such date; and
- (b) it is in the prescribed form embodying a statement of the company's assets and liabilities at a date not more than 6 months before the making of the declaration.

(6) The special resolution to wind up a company voluntarily ~~shall not be effective unless it shall also name the person or persons who is or are to be, and who has or have consented in writing to the company that he is or they are willing to be, liquidator or liquidators of the company charged with the proper conduct of the liquidation of the company.~~

(7) When a company has passed a special resolution to wind up voluntarily and appoint a liquidator the liquidator shall, within 14 days thereafter, give notice thereof in the *Gazette* and in the "Atoll Pioneer" and deliver a copy of the resolution to the Registrar and to the Collector of Income Tax.

(8) The following provisions shall apply to the winding up of a company voluntarily:—

- (a) the person or persons appointed liquidator shall be paid as remuneration for his or their services such sum as shall be determined by ordinary resolution of the members of the company or by the Court in default of any such resolution being passed; and
- (b) on appointment as liquidator all the property and assets, books, papers and records of the company shall be delivered to the liquidator and all the powers and discretions vested in the directors of the company shall forthwith vest in and be exercisable by the liquidator and shall forthwith cease to be exercisable by the directors save where the liquidator expressly authorises the directors or any of them to continue such powers and discretions or any of them on such terms as the liquidator shall consider proper; and

- (c) a liquidator shall be deemed to stand in a fiduciary relationship to the company as if he were a director thereof, and the provisions of section 101 shall *mutatis mutandis* apply; and
- (d) where 2 or more liquidators are appointed they shall act jointly, save where they expressly agree in writing among themselves as regards any particular part of their duties; and
- (e) the liquidator may carry on and continue the business of the company so far as may be necessary for the beneficial winding up thereof, and shall realise the assets and discharge the debts and liabilities of the company; and
- (f) after paying or providing for payment of all debts and liabilities of the company and the costs and expenses of the winding up, subject to obtaining a clearance certificate from the Collector of Income Tax that all liability of the company to tax has been discharged, the liquidator shall distribute the assets of the company among the persons entitled thereto according to their rights and interests as specified in the Articles of the company:

Provided that the liquidator may make an interim distribution or distributions to the members in advance of any payment to creditors actual or contingent but in the event of him so doing, and there being insufficient assets remaining to enable him to discharge all the liabilities of the company, he shall be personally liable to discharge such liabilities in the event of the members omitting to reimburse him sufficiently to enable him to so discharge the liabilities; and

- (g) the liquidator may execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose may use, and attest the fixing of, the company's seal, if any; and
- (h) the liquidator may retain the services of a legal practitioner or other professional practitioner to advise him or assist him in the execution of his duties; and
- (i) the liquidator may summon meetings of the members of the company, or any class of members, for the purpose of obtaining any sanctions or direction that he considers necessary to enable him to discharge his duties or for any other purpose:

Provided that any class of members who shall have received payment in full of their rights and interests in the winding up may be disregarded in determining the mem-

bers, or class of members, from whom sanction or direction is sought; and

- (j) the liquidator may at any time apply to the Court for directions in relation to any matter arising in connection with the performance of his functions, and on any such application the Court may give such directions or make such order as the Court thinks proper; and
- (k) if a vacancy occurs by death, resignation or otherwise in the office of liquidator the members, by ordinary resolution, may fill the vacancy, but so that where 2 or more liquidators are appointed the survivors or survivor may continue to act and may appoint any competent person to fill any vacancy; and
- (l) the Court may, on the application of any member of the company who has an interest at the time of the application in the liquidation or of the Registrar in any case where the Registrar is not satisfied with any explanation required to be given to him by the liquidator under subsection (9) (iv) or if any such explanation is not given, remove a liquidator and appoint another in his place or appoint a liquidator if, from any cause whatsoever, there is no liquidator acting; and notice of any change in the appointment of a liquidator shall be given to the Registrar within 14 days of such change; and

(m) the following persons shall not be competent to be appointed or to act as liquidator of a company:—

- (i) an infant; or
- (ii) a person of unsound mind; or
- (iii) a body corporate; or
- (iv) an undischarged bankrupt; or
- (v) a director or other officer of the company or any associated company and a person who is a partner, employer or employee of any such director or officer; or
- (vi) a person who does not ordinarily reside in Kiribati; or
- (vii) a person in respect of whom a disqualification order under section 118 is currently in force,

but an auditor of a company may be appointed as liquidator of the company.

- (9) (i) The liquidator shall keep proper books of account and records with respect to his acts and dealings and his con-

duct of the winding up and all the receipts and payments by him and, so long as he carries on the trading business of the company or any trading business carried on by the company, he shall keep a separate and distinct account of such trading.

- (ii) The liquidator shall, not more than 9 months after his appointment prepare and lodge with the Registrar and send to every member of the company, other than a member who no longer has a continuing interest in the winding up, an account of his receipts and payments made up to a date not more than 6 months after such appointment and a plan of distribution, and, if the liquidation shall continue beyond the expiration of the period of 1 year from the date of the commencement of the winding up, the liquidator shall prepare and lodge further accounts and plans of distribution and send them to every member, other than as aforesaid, at intervals of not more than 6 months from the date of the lodging of the previous account, such further accounts to be made up to a date not more than 3 months previous to the date of lodgement.
- (iii) On the application of any member of the company who at the date of application has a continuing interest in the winding up the Registrar may require the liquidator to have any account or accounts lodged pursuant to subsection (9) (ii) of this section audited by such person as the Registrar shall appoint, and the remuneration of such auditor shall be fixed by the Registrar and shall be payable as part of the expenses of the winding up.
- (iv) The Registrar may grant an extension of time for the lodging of accounts under this subsection, and may from time to time require of a liquidator explanation of any matter relating to the conduct of the winding up.
- (v) So soon as the affairs of the company are fully wound up the liquidator shall prepare and send to every member holding equity shares, and to every other member who has not received the fixed amount payable under the Articles of the company in the winding up in respect of his shares in the company, final accounts of the winding up showing how the winding up has been conducted, the result of any trading carried on by the liquidator, and how the property of the company has been disposed of.
- (vi) Within 14 days of the date on which copies of the final accounts are sent to members in accordance with subsection (9) (v) of this section any member to whom such accounts have been, or should have been, sent may serve

notice in writing on the liquidator to call a meeting of such members to approve, by ordinary resolution of such members, such final accounts and upon any such notice being served the liquidator shall comply with such notice.

(vii) At the expiration of the said period of 14 days first referred to in subsection (9) (vi) of this section, if notice in writing to convene a meeting as therein provided has not been served on him, the final account shall be deemed to be approved or, at the expiration of 14 days after the date on which any meeting is held pursuant to the said subsection, the liquidator shall, if the final account is approved or deemed to be approved, within 7 days thereafter deliver a copy of the final accounts to the Registrar.

(10) A company which is being wound up voluntarily shall be dissolved at the expiration of 3 months from the date on which the Registrar has notified his acceptance of registration of the final accounts, and at the expiration of such period the Registrar shall strike the company off the Register of Companies and publish particulars thereof in the *Gazette* and in the "Atoll Pioneer".

(11) The liquidator shall preserve the books and papers of the company and of the liquidator relating to the winding up for a period of 2 years from the dissolution of the company:

Provided that if the company which has been wound up is the subsidiary of another company such books and papers shall be preserved so long as such other company continues in existence.

(12) The regulations may prescribe rules as to the form and content of a liquidator's accounts and as to the conduct of meetings in a voluntary liquidation and in the absence of such rules, or in so far as such rules shall not relate to the conduct of meetings, the provision of the Rules of the company shall apply.

(13) At any time during the course of a voluntary winding up prior to the date of dissolution, the Registrar, on the application of the liquidator, may stay the liquidation proceedings.

(14) Not less than 14 days' notice in writing of any application to stay the liquidation proceedings shall be given by the liquidator to every member of the company and to every creditor who shall not have been paid, and such notice shall specify the reasons for the application and shall state that the person to whom the notice is sent may make representations to the Registrar as herein provided, and the Registrar, after receiving representations from any such member or creditor and a report from the liquidator on his conduct of the winding up and the reasons for the application, may, in his discretion, make an order terminating the winding up

proceedings and restoring management of the company to the directors at the time of the commencement of the winding up, or to such other persons as may be named in the application as proposed directors, and may make such directions as he thinks proper in relation to the resumption of the company and its management by the directors and as to the discharge of the liquidator; and, as from the date on which the Registrar makes an order staying the winding up proceedings the company shall continue in existence without prejudice to any transaction or dealing entered into by the liquidator in the performance of his duties.

(15) Where a company is being wound up, every invoice, order, notice or business letter issued by or on behalf of the company or any liquidator of the company, being a document in which the name of the company appears, shall contain a statement that the company is being wound up and whether the winding up is a voluntary winding up or an official winding up, and shall specify the surname and initials of the liquidator and the business address of the liquidator.

~~(16) If it appears to the liquidator of a company in voluntary liquidation that the assets will not be sufficient to discharge the liabilities, the liquidator shall forthwith notify the Registrar who shall forthwith make application to the Court for an order of winding up under the supervision of the Court.~~

(17) Where a liquidator has funds in his possession which represent sums due to any members who have not claimed such sums (including any unclaimed dividends not previously forfeited pursuant to section 66 or any sums due to any missing members under section 26), the liquidator shall pay such funds to the Registrar for the benefit of the Republic but so that the Court on application by any person who satisfies the Court of his right thereto may direct the Republic to make such payment to the applicant as the Court in all the circumstances considers proper.

(18) Nothing in this Ordinance as regards liquidation or dissolution shall bar any civil or criminal proceedings against any director, manager or other officer of a company for fraud or misconduct or breach of duty or trust or for any acts, matters or things for which proceedings might have been taken before the company was dissolved.

126. (1) Where a company has been dissolved under this Ordinance, the Court may at any time after the date of dissolution, on application being made by the liquidator, or by any other person who shows reasonable grounds for making an application, make an order, upon such terms as the Court thinks proper,

Cancelling
dissolution

cancelling the dissolution and restoring the name of the company to the Register of Companies.

(2) Details of any order made by the Court under this section shall be published in the *Gazette* and in the "Atoll Pioneer" and, upon the name of the company being restored to the Register of Companies, the company shall be deemed to have continued in existence as if it had not been dissolved, except that for purposes of any period of limitation time shall not be deemed to run during the period between dissolution and restoration, and the Court may by the order give such directions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the company had never been dissolved and provide for the appointment of directors to resume management of the company, but without prejudice to any transaction or dealing by the liquidator in his conduct of the winding up.

Distribution
without full
winding up

127. (1) Where a company has paid and discharged all its liabilities and ceased its trading operations and distributed the whole of its remaining assets (if any) to its shareholders the directors of the company or any 2 of them on behalf of all the directors (but so that 1 of such directors shall be a director resident in Kiribati) may, on making an affidavit in the prescribed form and delivering the same to the Registrar, together with a clearance certificate from the Collector of Income Tax, apply to the Registrar to strike the company off the Register of Companies.

(2) The Registrar shall forthwith publish details of the application in the *Gazette* and in the "Atoll Pioneer" and, unless notice of objection is made to the Registrar in the prescribed form within 28 days of such details being published, the Registrar shall strike the company off the Register of Companies and shall publish details of the striking off in the *Gazette* and the "Atoll Pioneer", and the company shall be dissolved on the date specified in the details so published.

(3) In making an application pursuant to this section the applicants shall name a person who shall have consented in writing to have custody of all the books, papers and records of the company for the period of 2 years from the date of dissolution, or for such longer period as is required where the company is a subsidiary of another company, and such books, papers and records may at any time be inspected by the Registrar.

(4) When any notice of objection is given to the Registrar as provided in subsection (2), the Registrar shall consider such objection and shall receive representations from the objector and the company by its directors and, if he determines that the objec-

tion is well founded, he shall make such direction on the company as he considers proper and the directors shall comply therewith.

128. Where a company has been dissolved under this Ordinance and at any time thereafter it is shown to the satisfaction of the Court that there exists property in the name of the company, or in which the company has an interest, the Court, on the application of any person who was a member or creditor of the company at the date of dissolution or any person properly deriving title through any such member or creditor, may make a vesting order in relation to such property or interest whereunder the title to such property or interest becomes, on the date on which the vesting order is made, vested in the person named in the vesting order as trustee on behalf of all persons who are able to show to the Court that they would have been entitled to share in such property if the existence of the property had been known immediately prior to the date of dissolution, and the person named as trustee shall hold such property, or the interest of the company therein, upon such terms and in accordance with such directions as the Court shall order; and such vesting order shall be deemed to constitute a valid transfer or contract to transfer of the property in favour of such person or persons, and any such vesting order shall, if it relates to real property, be entered in the Land Register as if it were a valid contract for the transfer of such real property and, where any property which it is proposed should be the subject of a vesting order is leasehold property, before making any such order the Court shall have regard to any terms of the lease under which the property is held and in particular any provision therein as to any assignment of such lease.

Vesting
order

129. (1) A company may be wound up by order of the Court if the Court makes an order for an official winding up following application made to the Court pursuant to section 24, 120, 121 or 124, or if the company is unable to pay its debts, or if the Court is satisfied that it is just and equitable that the company should be wound up.

Winding up
by order of
the Court
(official
wind-
ing up)

(2) Where an order is made for the official winding up of a company, the Court shall appoint an official receiver.

(3) The official receiver is subject to the supervision of the Court.

(4) The rules of court shall make provision for the powers, practice and procedure of the Court as regards the property and assets of the company and the investigation by the official receiver of the conduct of the directors and others in the management of the company.

(5) Until such time as rules of court are made for the purposes of subsection (4), the Companies (Winding-up) Rules 1949 of England, as in force immediately before Independence Day, apply, with the necessary modifications, for those purposes.

(6) Notwithstanding anything in subsections (4) and (5)—

(a) the assets available for distribution in the winding up are those which remain after the claims of secured creditors (so far as their rights have not been affected by law) are satisfied; and

(b) all amounts due in respect of contributions payable by the company to the Provident Fund are preferential debts.

Cap. 37 of
1977

(7) In subsection (6) (b), "the Provident Fund" means the Fund established by the Provident Fund Ordinance.

(8) On completion of an official winding up the official receiver shall present his final accounts and a report of the conduct of the liquidation to the Court and the dissolution of the company shall not take effect until the Court signifies its approval of such accounts and report to the Registrar.

PART III

PRIVATE COMPANIES

Basic
conditions

130. (1) For the purposes of this Ordinance a private company shall be a company which in its Rules states that it is a private company and which satisfies the following basic conditions:—

(a) its Rules restrict the right of a member to transfer its shares; and

(b) the number of its members is not more than 25, and where 2 or more persons hold 1 or more shares jointly they shall be treated as a single member.

(2) A private company shall not be entitled to make any invitation to the public to acquire any of its shares or debentures.

(3) A private company may not issue bearer shares or share warrants in bearer form or bearer convertible debentures.

Directors

131. Subject to the provisions of the Rules of a private company, the following provisions shall apply as regards the directors of a private company:—

- (a) no person may be appointed as a director of a private company (other than the first directors named in its original Articles) except by notice in writing signed by the holders of all the equity shares of the company; and
- (b) a director of a private company shall hold office so long as he shall live unless he shall resign by giving to the company not less than 3 months' notice in writing or be removed from office by instrument in writing signed by the holders of all the equity shares of the company in which event any such removal shall take effect at the expiration of 3 months from the date of the service of notice of removal on the director, the company and the Registrar, whichever notice shall be served first; and
- (c) the instrument appointing any person a director of a private company shall specify any duties specifically to be undertaken by such director in addition to his normal duties as a director, and the remuneration to be paid to such director for such additional duties; and
- (d) no contract of service shall be entered into by a private company relating to the appointment of a director, or to the appointment of a director to executive office, unless such contract be approved in writing by the holders of all the equity shares of the company; and
- (e) the remuneration of the directors of a private company (other than the remuneration of a director who is not a shareholder or debenture holder), including any remuneration in respect of any additional duties, shall only be payable out of profits available for dividend and in priority to any payment by way of dividend, with remuneration for additional duties ranking for payment before payment of ordinary remuneration of directors.

132. (1) Shares in a private company shall be transferable subject to the restrictions contained in the Articles of the company:

Transfer of
shares

Provided that—

- (a) no transfer of any shares of a private company may be made to any person who is disqualified for membership of a company under this Ordinance; and
- (b) in the event of the death or bankruptcy of any member the legal personal representatives of a deceased member and the trustee in bankruptcy may at any time within 3 months after they became entitled to the shares of the deceased or bankrupt member serve on the company a notice

(hereinafter called "a transfer notice") stating that they desire the continuing members of the company to acquire all such shares and, if any such notice is so served, the secretary of the company shall forthwith give notice in writing to the continuing members who shall be obliged to acquire such shares and the provisions of this section shall apply.

(2) The shares comprised in a transfer notice shall be acquired by the continuing members in proportion to the number of the existing shares of the same class as those comprised in the transfer notice held by them respectively, or in such other proportion as they shall agree, and unless the secretary of the company, on behalf of the continuing members, shall agree with the person who has served the transfer notice as to the price to be paid for the shares, the secretary shall within 2 months of the date on which the transfer notice is served on the company request a qualified accountant to certify in writing as to the fair value of the shares comprised in the transfer notice as at the date of such death or bankruptcy as if the company had been wound up on that date and its business and assets transferred as a going concern and the purchase price received for the transfer had been distributed among the shareholders in accordance with their rights, and the fees of such accountant shall be discharged by the continuing members and the proposing transferor in proportion to their respective shareholdings.

(3) Unless the continuing members and the outgoing member otherwise agree, any sale and purchase to be effected under this section shall be completed within 1 month of the date on which the said qualified accountant notifies the company and the proposing transferee of the fair value to be paid for the shares of the outgoing member, and such fair value shall be binding on all parties and shall carry interest at such rate as the said accountant shall certify to be reasonable compensation for the continued use by the company of the funds of the deceased or bankrupt member for the period from the date of termination of membership to the date of completion, and if any continuing member shall fail to complete the sale and purchase on the due date such failure to complete shall entitle the outgoing member to forthwith pass a resolution to wind up the company and delivery of such resolution to the Registrar shall constitute grounds whereon the Registrar may present a petition for a Supervision Order in respect of the company:

Provided that if the continuing members are unable to complete the purchase of the shares of the deceased or bankrupt member without resort to the funds of the company they may

submit a scheme to the Court involving utilisation of the said funds and the Court may make such order as it thinks fit in relation to any such scheme (after making provision to protect the interests of creditors), including a direction that the completion price be paid by instalments to be secured in such manner as the Court shall direct (including provision for payment of interest), and any such order shall bind the continuing members, the proposing transferor and the company and their respective successors in title, and if there be default in any such order made by the Court the purchase moneys shall become immediately payable as if they were a debt due from the company as well as from the relevant continuing member and shall constitute evidence of insolvency of the company for the purpose of presentation of a petition to have a Supervision Order made against the company.

(4) The obligations of the continuing members to acquire the shares of a proposing transferor shall not apply if the company shall go into voluntary liquidation within 2 months after the secretary of the company shall have notified the continuing members as provided in subsection (1), and on any resolution that the company be wound up voluntarily any votes of the outgoing members shall be disregarded.

(5) In the event of any director of a private company being removed from office, such director may at any time within 3 months after the date of such removal serve the company with a transfer notice in respect of all the shares of the company held by him, in similar manner to a transfer notice served pursuant to subsection (1) and the same results shall follow as if the transfer notice served pursuant to that subsection, and the provisions of subsections (1) to (4) (inclusive) shall *mutatis mutandis* apply as regards the shares of the former director and the obligations of the other members to acquire such shares.

(6) In the event of the directors of a private company refusing to register a transfer of the shares of a member such member may at any time within 3 months after the date of such refusal serve the company with a transfer notice in respect of all the shares in the company held by him in similar manner to a transfer notice served pursuant to subsection (1) and the same results shall follow as if the transfer notice were a transfer notice served pursuant to that subsection, and the provisions of subsections (1) to (4) (inclusive) shall *mutatis mutandis* apply as regards the shares comprised in a transfer notice and the obligation of the other members to acquire such shares:

Provided that the Articles of a private company may provide that a transfer notice may not be given under this section unless

the member serving such notice shall have been a member of the company for a specified period and any such provision shall not be altered except with the consent in writing of every member of the company.

Written
resolutions
and meetings

133. (1) In the case of a private company a resolution in writing signed by not less than three fourths of the members of the company entitled to vote or a sole member so entitled or their respective duly authorised agents shall be as valid and effective for all purposes as if it had been duly passed at a meeting duly convened and held on the date specified in the resolution as being the date on which the resolution is to be deemed to have been passed, and, if described as a special resolution, shall be deemed to be a special resolution for the purposes of section 82 (2):

Provided that—

- (a) save as provided in section 27, where any shares conferring voting rights are registered in the name of a deceased or bankrupt member a resolution in writing shall not be effective unless it be signed by the legal personal representatives or trustee in bankruptcy of the deceased or bankrupt member notwithstanding that the legal personal representatives or trustee be not registered as members; and
- (b) a copy of the resolution in writing is sent to the auditor (if any) of the company and to every member of the company not so entitled to vote or who has not signed such written resolution not less than 48 hours before the said date specified in the resolution; and
- (c) the written resolution so signed is affixed as an entry in the minute book of the company.

(2) It shall not be necessary for a private company to hold a meeting of the company if everything required to be done at that meeting by ordinary resolution or special resolution is done by means of an entry in its minute book in accordance with this section.

(3) Any such entry may be signed on behalf of a member by his agent duly authorised in writing.

(4) For the purposes of this section a memorandum pasted or otherwise permanently affixed in the minute book and purporting to have been signed for the purpose of becoming an entry therein shall be deemed to be an entry accordingly, and any such entry may consist of several documents in like form, each signed by or on behalf of 1 or more members.

(5) It shall not be necessary for a private company to hold an

Annual General Meeting as required under section 70 if the company sends copies of its accounts and all statutory reports annexed thereto to each person entitled to receive such copies and to the Registrar within the period fixed by this Ordinance for the submission of a company's accounts to its members.

134. (1) All the share capital with which a private company is registered must be subscribed for in the Articles delivered prior to incorporation, and shall be deemed to be allotted to the respective subscribers on the date of the incorporation of the company, and prior to the application for registration of the company all moneys payable by such subscribers shall be paid before such application to the Registrar as evidenced by a banker's statement of deposit pending incorporation, save where the consideration for the shares to be subscribed is not to be paid in cash.

(2) No private company shall increase its share capital beyond the registered capital unless—

(a) all the new shares are subscribed for in a memorandum of subscription in the prescribed form delivered to the Registrar with details of the resolution effecting such increase; and

(b) the names of the subscribers of the memorandum of subscription are, on the increase being made, duly entered in the company's register of members in respect of the shares respectively so subscribed for by them.

(3) All the new shares shall be deemed to be allotted to the respective subscribers on the date on which the increase is made.

135. (1) A private company shall not be required to appoint an auditor if all the members of the company shall have agreed in writing that they do not require the company to appoint an auditor and the directors of the company deliver to the Registrar with the Annual Return, which is required to be so delivered under the provisions of section 62, a certificate signed by all the directors stating that—

(a) the company, in respect of the financial year to which the Return relates and at the date of such Return—

(i) kept and continues to keep such accounting records as correctly record and explain the transactions and financial position of the company; and

(ii) kept and continues to keep its accounting records in such manner as would enable true and fair accounts of the company to be prepared.

(b) the company's accounts and group accounts (if any) contain a statement that the accounts have not been audited; and

(c) the accounts give a true and fair view of the profit or loss and financial position of the company as at the end of the financial year to which they relate.

(2) If at any time the directors of a private company are unable or fail to give such a certificate as is referred to in subsection (1), the directors shall forthwith appoint an auditor as required by this Ordinance to audit the accounts of the company for the period subsequent to the period of the last Annual Return which has been filed by the company and which was accompanied by such a certificate.

(3) The Registrar may at any time on the application of any member or creditor of a private company (after hearing any representations of the company on any such application) require the directors of the company to appoint an auditor to audit the accounts of the company from such date as the Registrar may direct, and until such requirement is revoked by the Registrar the provisions of this Ordinance as to auditors shall apply to such private company.

(4) The books of account of a private company shall always be open, during usual working hours on business days, to the inspection of every member holding equity shares.

Annual
returns

136. (1) A private company shall with its Annual Return unless it delivers a copy of its statutory accounts circulated to its members for the financial year of the company ending before the date up to which the Annual Return is made up, deliver a financial statement based on such accounts in the prescribed form or a certificate of solvency signed by each director of the company.

(2) A certificate of solvency shall—

(a) state the amounts shown in the company's last balance sheet as the total values respectively of the company's fixed assets, current assets and investments, showing separately the respective totals of any amounts due to the company by any director or any associate of a director or by any member and amounts due to the company by its holding company or any subsidiary company or any company controlled by its holding company; and

(b) state the amount shown in the company's last balance sheet as the total amount of its debts and liabilities, showing separately any debts due to any director or to any

member and any debts due to its holding company or to any company controlled by its holding company; and

(c) state whether in the opinion of the directors of the company the company was able or unable at the date of such accounts to pay its debts and liabilities as at the date of such balance sheet; and

(d) state whether or not since the date of such last balance sheet there has been any material change in the financial position or prospects of the company and a summary of the reason for, and the extent of, such material change.

PART IV

CONVERSION OF ONE TYPE OF COMPANY INTO ANOTHER TYPE OF COMPANY

~~137. (1) In the event of a private company ceasing to satisfy~~ Conversion
of private
company into
a public
company
the basic conditions referred to in section 130 (1), the company shall on the happening of the occurrence which resulted in such cessation become a public company as from the date of such happening, and within 2 months thereafter the directors of the company shall cause to be delivered to the Registrar for registration a notice of conversion in the prescribed form accompanied by duly adopted new Rules or internal regulations in a form approved by the Registrar as being Rules or internal regulations appropriate for a public company, and within the like period the directors of the company shall make such appointments of secretary and auditor as are necessary to enable the company to comply with the provisions of this Ordinance as to the secretary and auditors of a public company, and as from the date of such happening all the provisions of this Ordinance which affect or relate to public companies shall apply to the company, and for the purpose of the provisions of this Ordinance as to auditing and registration of accounts of public companies the company shall be deemed to have been converted into a public company as from the date of the commencement of the financial year of the company during which such happening occurred, and any loans made by a private company to any of its directors or members shall be repaid within 6 months of the date of such cessation unless the auditors of the company shall certify that such loans are of a type that would be valid if they had been made by a public company:

Provided that the Registrar, on the application of the company, may certify that, having regard to the circumstances and subject

to such terms and conditions as he may impose, it is equitable to treat the company as not having ceased to be a private company.

(2) If the directors of a private company fail to convene a meeting of members for the purpose of securing compliance with subsection (1), the directors of the company, and each of its members, shall be jointly and severally liable for all debts incurred by the company after the date on which it ceased to comply with the said basic conditions.

Conversion
of a public
company into
a private
company

138. In the event of a public company altering its internal regulations so that the company will satisfy the basic conditions referred to in section 130 (1), on registration of such alteration together with notice of conversion in the prescribed form the company shall cease to be a public company and shall become a private company, and as from the date of such cessation the provisions of this Ordinance which affect or relate to private companies shall apply to the company, and for the purposes of the provisions of this Ordinance as to audit and registration of accounts such provisions shall cease to apply to the company with effect from the close of the financial year of the company during which the cessation occurs.

Effect of
change of
status

139. A change in the status of a company on conversion of one type of company into another type of company does not operate—

- (a) to create a new legal entity; or
- (b) to prejudice or affect the identity of the company or its continuity as a company; or
- (c) to affect the property, or the rights or the obligations of the company, or its directors, or other officers, or members; or
- (d) 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 prior to the change in its status may, notwithstanding the change in status, be continued or commenced by or against it after the change in status.

PART V

PROVISIONS APPLICABLE TO NON-KIRIBATI COMPANIES

External
companies

140. (1) An external company for the purposes of this Ordinance is a body corporate formed outside Kiribati which, at or

subsequently to, the commencement of this Ordinance has an established place of business in Kiribati.

(2) The expression "established place of business" includes a branch, management, share registration or other office, factory, shop or other fixed place of business, but does not include an agency unless the agent is an employee of the body corporate:

Provided that—

- (a) a body corporate shall not be deemed to have an established place of business in Kiribati merely because it carries on business dealings in Kiribati through a *bona fide* broker or general agent acting in the ordinary course of his business as such; and
- (b) the fact that a body corporate has a subsidiary which is incorporated, resident, or carrying on business in Kiribati, whether through an established place of business or otherwise, shall not of itself constitute the place of business of that subsidiary an established place of business of that body corporate.

(3) External companies which, after the commencement of this Ordinance, establish a place of business in Kiribati shall, within 1 month of the establishment of the place of business, deliver to the Registrar for registration—

- (a) a certified copy of the charter, statutes, regulations, memorandum and articles, or other instrument constituting or defining the constitution of the company in a language acceptable to the Registrar; and
- (b) a statement in the prescribed form giving the following particulars regarding the external company:—
 - (i) its name; and
 - (ii) the name and address of a person domiciled in Kiribati authorised by the external company to accept service of process and other documents on its behalf (in this section referred to as "the process agent"); and
 - (iii) the address of its registered or principal office in the country of its incorporation; and
 - (iv) in the case of an external company carrying on business in Kiribati a statement in the prescribed form giving the following particulars:—
 - (A) the nature of the business or businesses to be carried on in Kiribati; and
 - (B) the present forename and surname (and any

former forenames and surnames) of the person resident in Kiribati whom it has to manage or direct the carrying on of any such business in Kiribati (in this Ordinance referred to as "the local manager") together with the residential address of such person; and

(C) the address of its principal place of business in Kiribati and of any other place of business in Kiribati; and

(D) if the external company has a share capital, the amount of its paid up share capital and reserves as at the date on which the statement is made and the amount of share capital subscribed by persons domiciled in Kiribati; and

(v) such other particulars as may from time to time be prescribed.

(4) (i) Every external company which at the commencement of this Ordinance has an established place of business in Kiribati shall within 1 month after the commencement of this Ordinance deliver to the Registrar for registration the documents referred to in subsection (3).

(ii) Documents filed by an external company pursuant to any law repealed by this Ordinance and before the date of commencement of this Ordinance may be accepted in whole or in part, in satisfaction of the obligations of the company under this subsection at the discretion of the Registrar.

(5) (i) The Registrar shall register the said documents in the Register of External Companies.

(ii) Except with the permission in writing of the Minister of Finance, the Registrar shall not enter in the Register the name of any person in relation to any security unless there has been forwarded to him the prescribed evidence that the entry does not form part of a transaction which involves the doing of anything prohibited by the Exchange Control Ordinance, and that the external company to which the security relates has complied with the provisions of the Exchange Control Ordinance.

(6) If any alteration is made to or in the particulars contained in any of the documents referred to in subsection (3), the local manager shall give notice of the alteration to the Registrar in the prescribed form within 14 days of the effective date of alteration.

(7) An external company shall not appoint any person as its local manager or process agent or cause any person to be named as such unless such person has consented in writing to the appointment and a person shall not be qualified to be appointed as a local manager of an external company unless he is competent in accordance with section 91 to be appointed a director of a company incorporated in Kiribati under this Ordinance.

(8) The act of any person registered as the local manager of an external company while carrying on the business in Kiribati of that company shall bind the company unless the local manager has no authority to so act and the person with whom he was dealing had actual knowledge of the absence of authority, or, having regard to his position with or relationship to the company, ought to have known of such absence of authority.

(9) Any process or other document or notice shall be sufficiently served on an external company if it be delivered or sent by post to the person last registered as the company's process agent at his last registered address, even if such process agent refuses to accept service or the company has in fact ceased to carry on business in Kiribati.

(10) Any local manager or process agent shall be entitled to resign his appointment on giving to the external company not less than 1 month's notice in writing and a copy of such notice shall at the same time be given to the Registrar.

(11) Where notice of resignation has been given to an external company as provided in subsection (10), the external company shall before the expiration of such notice appoint another local manager or process agent, as the case may be, and on such appointment being made shall notify the Registrar and furnish him with the name and address of the new local manager or process agent.

(12) If an external company shall fail to make a fresh appointment and notify the Registrar as provided in subsection (11), or if the Registrar considers that the external company no longer owns any real or personal property or no longer carries on business in Kiribati, the Registrar may on giving to the external company notice in writing of his intention to strike the name of the external company off the Register of External Companies at any time thereafter strike the name of the external company from the Register of External Companies, and on publication in the *Gazette* and in the "Atoll Pioneer" of particulars of such striking off the external company as regards its affairs in Kiribati shall be deemed to be dissolved and the provisions of section 62 shall apply to the assets of the external company in Kiribati.

(13) Every local manager shall ensure that there is kept by every external company such accounting records and returns as are necessary to record an accurate account of the company's operations in Kiribati and of all transactions entered into in Kiribati by or on behalf of the external company, and every external company shall cause to be prepared within the period fixed under section 63 as regards preparation of accounts by companies registered under this Ordinance accounts in such form as may be approved by the Registrar which gives a true and fair view of its operations in Kiribati and which show the assets of the external company situate or arising from the conduct of business in Kiribati specifying the nature and extent of the transfer of such assets out of Kiribati whether directly or indirectly and the Exchange Control approval obtained in respect of such transfer, and any liabilities specifically attaching to assets, and the Registrar may in any particular case require that such accounts be audited in similar manner to the accounts of a company incorporated under this Ordinance.

(14) (i) Every external company shall—

- (a) conspicuously exhibit on every place where it carries on business in Kiribati or, with the consent of the Registrar, at its principal place of business in Kiribati the name of the company, the country in which the company is incorporated, and, if the liability of the members is limited, the fact that it is so limited; and
 - (b) cause the name of the company and of the country in which it is incorporated, and if the liability of the members is limited the fact that it is so limited, to be stated in legible letters at the head of all business letters of the company despatched in Kiribati.
- (ii) Where the name of the company is in a foreign language, the requirements of this Ordinance relating to the name of the company shall be deemed to be fulfilled by exhibiting and stating a translation thereof in a language acceptable to the Registrar.
- (iii) The fact that the word "limited", or its equivalent in a foreign language, forms part of the company's name shall be deemed a sufficient compliance with the obligations imposed by this Ordinance to the exhibition and stating of the fact that the liability of the members is limited.
- (iv) Every external company shall, in all trade circulars and business letters on or in which the company's name appears and which are despatched in Kiribati by or on

behalf of the company, state in legible letters with respect to each local manager—

- (a) his present forenames or initials thereof, and his present surname; and
- (b) any former forenames or surnames; and
- (c) his residential address.

(15) The regulations may prescribe the registers and returns to be kept and made by external companies and may provide for the production to the Registrar of details as to the operations of external companies in Kiribati and provide for different details to be produced by different types or classes of external companies.

(16) If an external company has a corporate name which in the opinion of the Registrar is undesirable, the Registrar may decline to insert such name in the Register of External Companies but instead require the company to use a business name approved by the Registrar as the name under which it may carry on business in Kiribati, and such business name shall appear as the name of the company in the said register, and the provisions of section 14(5), whereunder the Registrar may require a company to change its name, shall *mutatis mutandis* apply to any external company as regards the name in which it is registered in the said register.

(17) Where an external company goes into liquidation, or is dissolved, in its place of incorporation, the local manager shall within 28 days thereafter cause notice of the fact to be given to the Registrar who shall cause particulars to be published in the *Gazette* and in the "Atoll Pioneer" unless the local manager shall agree to wind up the affairs of the external company in a manner acceptable to the Registrar, and the liquidator may at any time after the external company goes into liquidation or is dissolved be appointed by the Registrar to take control of the affairs and assets in Kiribati of the external company and to administer the same in the interests of creditors in Kiribati as if the external company were an insolvent company incorporated in Kiribati.

(18) If any person shall in Kiribati carry on or purport to carry on business on behalf of an external company after the date on which it has gone into liquidation or been dissolved in its place of incorporation, such person shall be liable to a fine not exceeding \$50 for each day during which he shall continue so to do so and shall be personally liable for any debts incurred unless he shall satisfy the Court that he did not know, and was not neglectful in not knowing, that the external company had gone into liquidation or been dissolved and shall account to the liquidator for all assets which came into his possession after such date.

(19) If an external company ceases to have an established place of business in Kiribati the local manager, or the process agent if there be no such local manager, shall within 14 days after such cessation notify the Registrar in writing of such cessation.

(20) The Registrar may at any time on application being made to him restore the registration of an external company which has been previously struck off the Register of External Companies on such terms and conditions as he may think proper.

(21) Not later than 31 July in every year an external company shall deliver to the Registrar an Annual Return in the prescribed form made up to the last preceding 30 June and in default, unless such Return be delivered to the Registrar by 30 September next following accompanied by a late fee, the external company shall be dissolved on the said 30 September and the local manager shall be personally responsible for all debts and liabilities incurred by the external company after the said last preceding 30 June.

(22) Any external company which creates a charge on any of its property or assets in Kiribati or acquires any such property or assets subject to an existing charge, shall comply with the provisions of section 51 as to the registration of charges by a company incorporated under this Ordinance, and in the case of the first registration of an external company under this section the particulars to be delivered to the Registrar shall include particulars of any charge affecting property or assets of the external company in Kiribati.

(23) The Registrar may at any time require a local manager of an external company to notify him of the identity of the person or persons who directly or indirectly control the external company and in default the Registrar may apply to the Court to order that the name of the external company be struck off the Register of External Companies and to make such direction as it thinks proper to close down the operations of the external company in Kiribati.

(24) If the Registrar is of the opinion that it is not in the interests of Kiribati that an external company should continue its operations in Kiribati, with the sanction of the Minister the Registrar may apply to the Court to make an order and direction similar to that referred to in subsection (23), and on any application made under the said subsection or this subsection notice of the application shall be given to the local manager of the external company and the Court may hear any representations which the external company may wish to make.

(25) If any external company or any local manager or process

agent fails to comply with any of the obligations imposed by this section the external company and any local manager or process agent who, knowingly, is in default shall be liable to a fine not exceeding \$500 or, in the case of a continuing offence, \$50 for each day during which the default continues, and the rights of the external company concerned under or arising out of any contract made or transaction entered into in Kiribati during such time as the default occurs, or the external company is not duly registered under this Ordinance, shall not be enforceable by action or legal process:

Provided that—

- (a) the Court upon application may grant relief from such disability and upon any such application the Court may make such order as it thinks fit and such order may grant relief generally or in relation only to any particular contract or transaction and on such conditions as the Court may impose; and
- (b) nothing herein contained shall prejudice the rights of any parties against the external company in respect of any such contract or transaction or any other liability of the external company.

(26) A local manager of an external company shall be answerable for the doing of all such acts, matters or things as are required to be done by the external company under this Ordinance and shall be personally liable for all penalties imposed on the external company for any contravention of any of the provisions of this Ordinance unless he satisfies the Court that he should not be so liable by reason that he took all reasonable steps to avoid such contravention but was unable to comply with this Ordinance by reason of some act or omission on the part of the external company or any of its officers to which he was not accessory.

(27) It shall not be lawful for any person in Kiribati to make or to circulate in Kiribati any invitation to the public to acquire securities of, or to lend money to, or deposit money with, any external company, or any other company not incorporated in Kiribati, except with the consent in writing of the Registrar who may impose such conditions as he may think fit, but this provision shall not prohibit the circulation in Kiribati of newspapers or other publications published outside Kiribati which contain any such invitation to the public by any such other company.

(28) Registration of an external company under this Ordinance shall not empower any such company to do any act or thing in Kiribati in respect of which under any other law a licence, consent or other similar authorisation requires to be obtained.

PART VI

SUPPLEMENTARY

Service of
documents by
company

141. (1) A document may be served by a company on any member, debenture holder, or director of the company either personally or by sending it through the post in a prepaid letter addressed to him at his address on the register of members, debenture holders, or directors, as the case may be, or (if he has no registered address) at the address, if any, supplied by him to the company for the giving of notices to him, or by leaving it for him with some person apparently over the age of 16 years at such address..

(2) A document may be served by a company on the joint holders of any share or debenture of the company by serving it on the joint holder named first in the register of members or debenture holders in respect of the share or debenture.

(3) A document may be served by a company upon the person upon whom the ownership of any share or debenture has devolved by reason of his being a legal personal representative, receiver, or trustee in bankruptcy of a member or debenture holder either personally or by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased, receiver, or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose of such person, or by leaving it for him with some person apparently over the age of 16 years at such address, or (until such address has been supplied) by serving the document in any manner in which the same might have been served if the death, receivership or bankruptcy had not occurred.

(4) Where a document is sent by post service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and to have been effected at the expiration of 7 days after the letter containing the same is posted. The letter need not be despatched by registered post but where it is sent to an address outside Kiribati it shall be despatched by air-mail, and the despatch notified to the addressee by telegram.

Service of
documents
on company

142. (1) A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company, or the latest address registered by the Registrar as the registered office of the company or the post office box number notified to the Registrar.

(2) Any document to be served by post on a company shall be

posted in such time as to admit of its being delivered in due course of delivery within the time, if any, prescribed for the service thereof; and in proving service it shall be sufficient to prove that a letter containing such document was properly addressed, prepaid and posted, whether or not by registered post.

(3) If a company has no registered office, service upon any director of the company or, if the company has no director or if no director can be traced in Kiribati, upon any member of the company, shall be deemed good and effectual service upon such company.

(4) If it shall be proved that any document was in fact received by the board of directors, managing director or secretary of a company such document shall be deemed to have been served on the company notwithstanding that service may not have been effected in accordance with the foregoing provisions of this section.

(5) Nothing in this section shall derogate from any provision in ~~any law relating to the service of any document, or from the~~ power of any court to direct how service shall be effected of any document relating to legal proceedings before that court.

143. (1) Any register, minute book, or book of accounts Books and registers required by this Ordinance to be kept by a company may be kept either by making entries in bound volumes or by a system of mechanical recording, or otherwise.

(2) Where any such register, minute book or book of account is not kept by making entries in bound volumes, adequate precautions shall be taken for guarding against the risk of falsification that might arise from the method of recording, and for facilitating discovery.

(3) Where any system of mechanical recording is adopted, adequate arrangements shall be made for making the information therein available in an intelligible form to anyone lawfully inspecting the register, minute book or book of account.

(4) If default is made in complying with subsection (2) or (3) the company and every officer of the company who is in default shall be liable to a fine not exceeding \$500.

144. (1) Any person who by any statement, promise or forecast which is untrue, misleading, false or deceptive induces or attempts to induce another person to enter into or offers to enter into— Miscellaneous offences

(a) any agreement for or with a view to acquiring, disposing

of, or underwriting, securities, or lending or depositing money to or with any body corporate; or

- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

and in either case, by whatever term the securities are described, and whether or not that term includes shares, stock, equity or capital, or is any other description of the use or possession of the money of a person by a company, shall be guilty of an offence and liable to a term of imprisonment not exceeding 7 years unless he shall prove that he had reasonable grounds to believe and did believe that the statement was true or that the promise or forecast was not misleading, false or deceptive.

(2) Any person who, by any dishonest concealment of material facts induces or attempts to induce another person to enter into any of the transactions referred to in subsection (1) shall be guilty of a like offence and subject to the like punishment as that prescribed by that subsection.

(3) If any person in any return, report, certificate, account, or other document required under any provision of this Ordinance to be sent to the Registrar wilfully makes a statement false in any particular, knowing it to be false, he shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding \$1,000, or both such imprisonment and fine.

(4) If any person or persons trade or carry on business in Kiribati under any name or title of which the word "incorporated" or "corporation", or any contraction or imitation thereof or any equivalent in any other language, forms part, or of which the word "limited", or any contraction or imitation thereof or any equivalent in any other language, is the last word, that person or those persons shall, unless duly incorporated under this Ordinance or some other enactment and, where "limited" or any contraction or imitation thereof is the last word, unless duly incorporated with limited liability, be liable to a fine not exceeding \$100 for every day during which that name or title has been used.

Publication
of capital to
contain
particulars of
capital

145. (1) No company having a share capital shall issue or cause to be issued to the public an advertisement or circular containing a statement of the amount of its authorised or issued share capital unless the advertisement or circular also contains a statement of the amount of its paid up share capital, and if a

company issues or causes to be issued to the public an advertisement or circular containing a statement of the amount of its share capital without specifying that it is its authorised or issued share capital the statement shall be of the amount of its paid up share capital.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding \$500.

146. (1) Where, under any section of this Ordinance it is provided that if legal proceedings are instituted by any person he shall sue in a representative capacity on behalf of himself and other members of a class the following provisions shall apply:—

Legal
proceedings

- (a) such person may commence proceedings in such representative capacity without obtaining the consent and approval of any other member of the class represented and, subject to paragraph (b), such person shall have the sole conduct of the action and no other member of the class shall be deemed to be a party to the proceedings or in any way liable for the costs thereof; and
- (b) any member of the class represented may at any time prior to final judgment apply to the Court for leave to be made a party to the proceedings, whether as co-plaintiff or otherwise, and the Court may grant leave upon such terms regarding the conduct of the action and otherwise as it shall think fit; and if such leave is granted the applicant shall become a party to the proceedings and liable accordingly to have an order for costs made against him; and
- (c) any judgment given in the action shall bind and enure for the benefit of all members of the class represented, whether or not they have intervened in the proceedings in accordance with paragraph (b); and
- (d) no proceedings shall be dismissed, settled or compromised without the leave of the Court which may, if it shall think fit, order that notice of the proposed dismissal, settlement or compromise shall be given to all members of the class represented and any other persons; and
- (e) in relation to proceedings under section 107 this section shall be supplemented by the provisions of that section.

(2) Nothing in this section contained shall affect the validity of any agreement between the members of the class represented, relating to contribution towards the costs of the party or parties suing in a representative capacity.

Security for
costs against
a company

147. Where a body corporate with limited liability is the plaintiff in any legal proceedings the Court may, if it appears by credible evidence that there is reason to believe that the body corporate will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for the costs, and may stay all proceedings until the security is given.

Right of con-
tribution

148. Where more than 1 officer of a body corporate or other persons are liable to pay any damages, costs, compensation, debt, or monetary penalty under, or in respect of any breach of, any provision of this Ordinance, they shall have a right of contribution amongst themselves; and in any action to enforce liability or in an action to recover contribution the Court may award contribution on such terms as it shall consider equitable in all the circumstances and may exempt any person from liability to make contribution or direct that the contribution to be recovered from any persons shall amount to a complete indemnity.

Relief from
liability

149. (1) If in any proceedings against a member, officer or auditor of a company for any default or breach of duty under any provision of this Ordinance or against any trustee for debenture holders in respect of any breach of duty or trust it appears to the court hearing the case that that member, officer, auditor or trustee is or may be liable but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused, the court may relieve him in whole or in part from his liability on such terms as the court may think fit.

(2) Where any such member, officer, auditor or trustee has reason to apprehend that any claim may be made against him in respect of any breach of duty or trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for breach of duty or trust had been brought.

(3) Written notice of any application to the Court under subsection (2) shall be given to the Registrar at least 21 days before the date of the hearing of the application and the Registrar may appear on the hearing of the application and call such evidence and make such representations as he thinks fit.

Companies
formed for
special pur-
poses

150. Nothing in this Ordinance shall abrogate or affect any special legislation relating to companies carrying on the business of banking, insurance or any other business or having any other object or purpose from time to time subject to special control or

legislation, and a company shall not be incorporated under this Ordinance for the purpose of carrying on any such business except with the prior sanction in writing of the Minister responsible for that legislation.

151. (1) The rules of court of the Court relating to this Ordinance and to proceedings under this Ordinance may provide for the appointment of independent advisers to act on behalf of the Court or to assist the Court in relation to any question of fact or of opinion not involving a question of law or of construction.

Rules of court

(2) The remuneration of an adviser referred to in subsection (1) shall be defrayed out of the vote of the Ministry.

152. Unless a proposal relating to the affairs of a company or its Articles is specifically prohibited by this Ordinance, the Court may sanction any such proposal upon such terms and conditions and after hearing such representations as in all the circumstances it considers proper.

General authority of court

SCHEDULE 1 (Section 19)

TABLE A

RULES OR INTERNAL CONSTITUTION FOR A PUBLIC COMPANY HAVING A SHARE CAPITAL

Shares and Variation of Rights

1. On the issue of any new shares in the company the directors shall comply with section 36.
2. If at any time the shares are divided into different classes the rights attached to any class may be varied as provided in section 33.
3. The company may pay commission or brokerage as provided in section 40.
4. Shares Certificates will be issued in accordance with section 31.
5. The share capital of the company may be altered in accordance with section 42.

Transfer and Transmission

6. The shares of the company are transferable free from any restriction save that a share may not be transferred to a minor or to a person under any legal disability.
7. Shares shall be transferable and transfers shall be registered in the manner provided by section 27.

8. In the event of the death of a shareholder or in the event of the ownership of any share devolving upon any person by reason of his being the legal personal representative, receiver or trustee in bankruptcy of the holder or by operation of law the provisions of section 27 (15) shall apply.

Dividends

9. The company may by ordinary resolution declare dividends in respect of any year or other period, but no dividend shall exceed the amount recommended by the directors.

10. The directors may from time to time pay interim dividends in accordance with section 66 (6).

11. No dividend shall be paid unless—

- (a) the company will, after payment, be able to pay its debts as they fall due; and
- (b) the amount of such payment does not exceed the amount of the company's income surplus immediately prior to the making of such payment.

12. The directors may, before recommending any dividend, set aside out of the profits or income surplus of the company such sums as they think proper in order to provide for a known liability (including a disputed or contingent liability) or as a depreciation or replacement provision and may carry forward any profits or income surplus which they may think prudent not to distribute.

13. All dividends shall be declared and paid as a fixed sum per share.

14. No dividend shall bear any interest against the company.

15. Any dividend payable in cash may be paid by cheque or warrant (made payable to the order of the person to whom it is sent) sent by post and directed to the registered address of the shareholder or, in the case of joint holders, to the registered address of the one who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every dividend payment shall be accompanied by a statement showing the gross amount of the dividend and any tax deducted or deemed to be deducted therefrom.

16. The company may in accordance with section 66 (7) and (8) upon the recommendation of the directors—

- (a) make a capitalisation issue of shares; or
- (b) provide for payment of a dividend in whole or in part by distribution of securities for money of fully paid shares or debentures of any other body corporate or fully paid debentures of the company.

17. Unclaimed dividends may be cancelled and forfeited in accordance with section 66.

Accounts and Audit

18. The directors shall cause proper books of account to be kept and a profit and loss account and balance sheet to be prepared, audited and circulated in accordance with sections 62 and 63.

General Meetings

19. Annual General Meetings shall be held in accordance with section 70.

20. Extraordinary General Meetings may be convened by the directors whenever they think fit in accordance with section 70, and shall be convened on a requisition in accordance with section 77.

21. The quorum required for a general meeting shall be 2 members present or by proxy, and notice of general meetings shall be given to the persons entitled to receive notice and to attend general meetings in accordance with section 71.

22. In accordance with section 80, any member entitled to attend and to vote at a general meeting may appoint another person (whether a member of the company or not) as his proxy to attend and vote instead of him, and a proxy shall have the same rights as the member to speak at the meeting and to demand or join in demanding a poll.

23. An instrument appointing a proxy shall be in the following form or a form as near thereto as the circumstances admit—

Limited

I/We

being a member/members of the above-named company
hereby appoint _____ of

or failing him _____ of

as my/our proxy to vote for me/us on my/our
benefit at the Annual/Extraordinary General Meeting
of the company to be held on the _____ day of
19 _____ and at any adjournment thereof.

This Form is to be used—

* in favour of _____ resolution No. 1
* against _____

* in favour of _____ resolution No. 2
* against _____

Unless otherwise instructed, the proxy will vote or
abstain as he thinks fit.

* Strike out whichever is not desired.

Signed this

day of

19

24. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place in Kiribati as is specified in the notice convening the meeting, not less than 24 hours before the time for holding the meeting or adjourned meeting or in the case of a poll before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

25. A body corporate which is a member may attend and vote either by proxy or by a representative appointed in accordance with section 81.

26. General meetings shall be conducted in accordance with sections 82 to 85.

27. Minutes of general meetings shall be kept in accordance with section 88.

28. If at any time the shares of the company are divided into different classes the foregoing rules shall apply to meetings of any class of members as they apply to general meetings, but so that the necessary quorum shall be as set out in section 86.

Votes of Members

29. Subject to any rights or restrictions for the time being attached to any class of shares on a show of hands every member present in person shall have 1 vote and on a poll every member present in person or by proxy shall have 1 vote for each share of which he is the holder.

Directors

30. The number of directors of the company shall not be less than 2 or more than 10.

31. The continuing directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below 2 or the number fixed by these Rules as the necessary quorum they may act in the ordinary course of the business of the company for a period not exceeding 14 days after their number is so reduced but thereafter shall only act for the purpose of increasing their number to the minimum number or of summoning a general meeting of the company or of notifying the Registrar as required by section 91 and for no other purpose.

32. The following provisions shall apply as regard the election and retirement of directors:—

- (a) at the first Annual General Meeting of the company all the directors shall retire from office and at each subsequent Annual General Meeting one-third of the directors for the time being or if their number is not 3 or a multiple of 3 then the number nearest one-third shall retire from office; and
- (b) the directors to retire in every year under paragraph (a) shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those who retire shall (unless they otherwise agree among themselves) be determined by lot; and
- (c) in addition to the directors to retire at an Annual General Meeting under paragraph (a) any director who under section 91, 94 or 95 is due to retire shall retire at the relevant Annual General Meeting; and
- (d) a retiring director shall be eligible for re-election; and
- (e) a director appointed to the office of managing director or executive officer shall not while holding that office be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors; and
- (f) the company at the Annual General Meeting at which a director retires as aforesaid may fill the vacated office by electing a person thereto and in

default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost; and

- (g) no person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than 3 nor more than 28 days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing signed by a member entitled to attend and vote at the meeting of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected; and
- (h) on any increase or decrease in the number of directors the company may by ordinary resolution determine in what rotation the increased or decreased number is to retire from office; and
- (i) the directors shall have power at any time and from time to time to appoint any person to be a director either to fill a casual vacancy or as an addition to the existing directors but so that the total number of directors fixed by these Rules shall not be exceeded. Any director so appointed shall hold office only until the next following Annual General Meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

33. The persons referred to in section 91 (6) and (7) shall not be competent to be appointed directors of the company.

34. A director need not hold any shares in the company but shall have the right to receive notice of and to attend and speak at all meetings of the company.

35. The office of director shall be vacated and a director may be removed in accordance with section 93.

36. Any director may be represented at any meeting of the directors by his alternate appointed and approved in accordance with section 109.

37. At least 2 directors of the company shall at all times be resident in Kiribati.

38. The remuneration payable to any director in whatsoever capacity shall be determined and approved by the members in general meeting in accordance with section 96.

39. The proceedings of directors shall be regulated in accordance with section 112, and the directors may delegate any of their powers to committees in accordance with section 67 (7).

40. Minutes of meetings of the directors and of any committee of directors shall be kept in accordance with section 113.

Powers and Duties of Directors

41. The business of the company shall be managed by the directors who may pay all expenses properly incurred in promoting and registering the company. Subject to section 99 the directors may exercise all such powers of the company (including power to borrow money and to mortgage or change its property and

undertaking or any part thereof and to issue debentures) as are not by the Ordinance or these Rules required to be exercised by the members in general meeting.

42. In any transaction with the company or on its behalf and in the exercise of their powers the directors shall observe the duties and obligations imposed on them by sections 100, 101 and 102.

43. Subject as provided in and subject to compliance with section 102, a director may enter into any contract with the company and such contract, or any other contract of the company in which any director is in any way interested, shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of the director holding the office of director or of the fiduciary relationship thereby established, and any director may act by himself or his firm in a professional capacity for the company (except as auditor) and his firm shall be entitled to proper remuneration for professional services as if he were not a director.

Executive and Managing Directors

44. The directors may exercise the powers conferred by sections 94 and 95 to appoint 1 or more of their number to any other office or place of profit under the company (other than the office of auditor) or to appoint 1 or more of their body to the office of Managing Director for such period and on such terms as they may determine and, subject to the terms of any agreement entered into in any particular case, may from time to time revoke any such appointment.

45. The provisions of sections 94 and 95 shall apply to any appointment made by the directors under Rule 44 and if the company omits to hold its Annual General Meeting and thus fails to ratify any appointment made under Rule 44 such appointment shall terminate without compensation on 31 December of the year in which such Annual General Meeting should have been held.

46. The secretary of the company shall be appointed by the directors and any person so appointed, and the first secretary named in the Articles of the company, shall hold office for such period and at such remuneration and upon such conditions as the directors shall think fit, and the first secretary, and any secretary so appointed may be removed from office by the directors subject however to his right to claim damages if removed in breach of contract. The directors shall have similar power to appoint a deputy or assistant secretary or to appoint 2 or more persons to act jointly as joint secretaries, and to appoint any body corporate to act as secretary provided that such body corporate designates 1 of its directors to undertake all the obligations imposed on such body corporate by virtue of its appointment as secretary of the company.

47. Any provision in the Ordinance or these Rules requiring or authorising an act or thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

48. The directors may from time to time appoint executives and agents of the company and may appoint any body corporate, firm or body of persons to be attorney or attorneys or agent or agents of the company for any of the purposes of its business, and vest in any such appointee any of the powers, authorities or discretion exercisable by the directors and for such period, at such remuneration and upon such conditions as they may think fit and may also authorise any such appointee to delegate all or any of the powers, authorities or discretions vested

in him, and the directors may revoke any such appointment subject however to the appointee's right to claim damages for breach of any contract relating to his appointment.

The Seal

49. The directors shall provide for the safe custody of the seal (if any) of the company and of any additional seal which they determine pursuant to section 69 shall be adopted and available for use by the company which shall only be used by the authority of the board of directors, or a committee of the directors authorised by the directors for that purpose, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary, or any deputy or assistant secretary, or by some other person resident in Kiribati appointed by the directors for that purpose and whose appointment has been notified to the Registrar in accordance with the said section 69.

50. The directors shall ensure that the company shall comply with the provisions of section 69 as to the maintenance of records relating to the occasions when the seal of the company is used and shall be responsible for the control and exercise of the powers of the company under section 69 as to the use of a seal of the company outside Kiribati.

Service of Documents

51. Any document may be served by the company on any member, director or debenture holder of the company in the manner provided by section 141.

Winding Up

52. If the company shall be wound up the liquidator may with the sanction of a special resolution of the relevant members divide among such members in specie or kind the whole or any part of the assets of the company and may for that purpose set such value as he considers fair upon any assets to be divided as aforesaid and may determine how such division shall be carried out as between such members. The liquidator may with the like sanction vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the relevant members as the liquidator thinks fit but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Interpretation

53. In these Rules, unless the context otherwise requires, words or expressions shall bear the same meaning as in the Ordinance and "the Ordinance" means the Companies Ordinance.

TABLE B

RULES AND CONSTITUTION FOR A PRIVATE LIMITED COMPANY

1. The company is a private company and accordingly—
 - (a) the right to transfer shares is restricted as provided in Rule 2 of these Rules; and
 - (b) the number of members may not exceed 20, not including persons who under section 130 need not be counted in computing the said limit of 20; and
 - (c) the company is prohibited from making any public offer or invitation to the public to acquire any of its shares or debentures; and

- (d) the company is prohibited from issuing bearer shares or share warrants in bearer form or bearer convertible debentures.

Transfer and Transmission of Shares

2. No transfer of any share may be made except with the approval of the directors, and no share may be transferred to an infant or to a person under any legal disability.
3. The provisions of section 132 shall apply, but so that no member may serve the company with a transfer notice in accordance with the rights conferred thereby unless he shall have been a member of the company for at least 3 years.

Directors

4. Directors shall be appointed and shall hold office in accordance with the provisions of section 131.

Meetings

5. The quorum at general meetings shall be in accordance with section 78 (2), namely if the company has only 1 member that member or his proxy shall be a quorum, or if the company has more than 1 member 2 members present in person or by proxy or 1 member so present who holds or represents more than 50 per cent of the voting rights exercisable at the meeting.

Increase of Capital

6. The company shall comply with the provisions of section 134 (2) relating to any increase in its share capital.

General

7. The Rules contained in Table "A" in Schedule 1 shall apply to the company save that Rules 6, 21, 32, 35 and 38 shall not apply to the company.

SCHEDULE 2

(Section 2)

DEFINITIONS

<i>Expression</i>	<i>Meaning</i>
"alternate director"	a person appointed alternate or substitute director pursuant to section 109.
"Annual General Meeting"	the meeting of a company required to be held pursuant to section 70 (1).
"Annual Return"	the return required to be delivered to the Registrar pursuant to section 62.
"approved trustee"	a person recognised by the Minister as an approved trustee for the purposes of section 50.

"Articles"	the Articles of Association (as defined in section 13) of a company for the time being in force.	
"associated company"	a company which is associated with a company by virtue of both companies being the subsidiary companies of the same holding company and in relation to 2 companies where any director of either company is also a director of the other company.	
"auditor"	the person for the time being holding office as auditor of a company pursuant to section 63.	
"authorised depositary"	a person appointed as an authorised depositary pursuant to the Exchange Control Ordinance.	Cap. 51 of 1973
"bearer share"	a share in respect of which a bearer share certificate is issued pursuant to section 47.	
"body corporate"	a company incorporated under this Ordinance or otherwise, and whether in Kiribati or elsewhere, or a prescribed form of legal association.	
"certificate of solvency"	the certificate which may be delivered by a private company with its Annual Return.	
"charge"	any security on property and includes a mortgage whether legal or equitable and a pledge and a chattel bond.	
"class consent"	as defined in section 33.	
"class meeting"	a meeting of a class of shareholders held for the purpose of giving a class consent.	
"company"	a company incorporated under this Ordinance or an existing company.	
"Companies Registry"	the office of the Registrar at which the register of every company and every external company is maintained.	
"controlling company"	<p>a company which directly or indirectly has power enabling it to control another company to the extent of exercising a decisive influence over its affairs and the conduct of its business or whether any transaction shall be entered into by that other company and in the determination of the terms of that transaction and in particular and without prejudice to the generality of the terms "controlling company" a company shall be deemed to be a controlling company—</p> <p>(a) if it holds directly or indirectly at least 50 per cent of the issued equity shares of that other company; or</p> <p>(b) if it is entitled to exercise or procure the exercise of at least half of the voting rights in respect of the issued shares carrying unrestricted voting rights of the company; or</p> <p>(c) if it is entitled or has power to determine the composition of the majority of the board of directors of that other company including—</p>	

- (i) the power, without the consent or concurrence of any other person, to appoint or remove all or the majority of such directors; and
- (ii) the power to prevent any person from being appointed a director except with its consent, and if the appointment of a director follows necessarily from his appointment as director of the first company it shall be deemed to be a power of the first company for the purpose of this definition.

"controlled company"

shall have a corresponding meaning.

"convertible debentures"

as defined in section 49.

"the Court"

the High Court.

"debenture"

includes debenture stock, bonds, notes and any other securities acknowledging the indebtedness of a company whether secured by charge on any of the assets of a company or not.

"debenture stock"

as defined in section 49.

"default fine"

a fine of \$10 for each day during which an omission under this Ordinance shall continue.

"director"

as defined by section 90, and includes an alternate or substitute director.

"executive director"

a director appointed pursuant to section 94 to some other office or employment with the company additional to his office as a director not being a managing director.

"existing company"

a company registered under the Companies Registration Ordinance which at the date of the commencement of this Ordinance had not been dissolved.

"external company"

bears the meaning assigned by section 140.

"Extraordinary General Meeting"

a meeting of a company not being an Annual General Meeting.

"equity share"

a share other than a preference share.

"financial year"

the period covered by the company's profit and loss account in accordance with section 62.

"floating charge"

as defined in section 49.

"holding company"

a company which holds in its own name together with those held in the name of a nominee and a controlled company or its nominee not less than 30 per cent of the issued share capital of another company, and in determining the shares held in such other company the following shall be disregarded:—

- (a) any shares held in a fiduciary capacity; and

	(b) any shares held by virtue of the provisions of any debentures or trust deed securing debentures; and
	(c) any shares held by way of security only for the purposes of transaction entered into in the ordinary course of business;
	and subsidiary company shall bear a corresponding meaning.
"income surplus"	the surplus of a company less any amounts attributed to any unrealised appreciation in the value of capital assets.
"late fee"	the additional fee payable on late delivery of documents for registration pursuant to section 7.
"limited company"	bears the meaning assigned by section 10.
"liquidator"	the person duly appointed to conduct the voluntary winding up of a company or as liquidator in an official winding up.
"local manager"	as defined in section 140.
"management agreement"	as defined in section 98.
<hr/>	
"managing director"	a director appointed to the office of managing director pursuant to section 95.
"member"	a person registered as the holder of shares of a company having a share capital.
"name"	in relation to a company the name by which a company is for the time being registered.
"Objects Section"	the objects of the company as specified in paragraph 3 of the Articles of the company.
"officer"	any director, secretary or employee of a company and receiver and manager other than a receiver and manager appointed by the Court and a liquidator in a voluntary winding up but does not include the auditor or legal adviser of a company or receiver who is not a receiver and manager.
"official winding up"	a winding up ordered by the Court pursuant to section 129.
"ordinary resolution"	as defined in section 82.
"person"	includes a body corporate.
"preference share"	a share, by whatever name called, which does not entitle the holder thereof to any right to participate beyond a specified and certain amount in any distribution whether by way of dividend or on redemption or on a winding up.
"prescribed"	prescribed by the regulations.

"prescribed form"	a document in a form prescribed.
"process agent"	as defined in section 140.
"Protection Order"	an order made pursuant to section 25.
"public company"	a company which is not a private company.
"public offer"	an offer or invitation to the public as defined in section 61.
"receiver" and "receiver and manager"	a person appointed as receiver or receiver and manager pursuant to section 55 or 56.
"redeemable shares"	shares designated by a company as redeemable shares pursuant to section 45.
"registered capital"	the share capital with which a company is for the time being registered.
"registered office"	the registered office of a company notified to the Registrar in accordance with section 16.
"Register of Companies"	the registers of every company and every external company maintained by the Registrar pursuant to section 6.
"Register of Directors' Interests"	the register required to be kept pursuant to section 108.
"the Registrar"	the person appointed Registrar pursuant to section 5.
"the regulations"	the regulations made under section 8.
"representative director"	a person holding office as a representative director pursuant to section 110.
"Rules"	the internal constitution of the company as contained in paragraph 8 of the Articles of the company.
"rules of court"	rules of court made under section 97 of the Constitution for the purposes of, or relating to, this Ordinance.
"seal"	the common seal (if any) of a company adopted pursuant to section 69.
"share capital account"	the amount of capital of a company represented by its share capital consisting of shares having a par value.
"share premium account"	the account required to be established pursuant to section 44.
"special resolution"	as defined in section 82.
"stated capital account"	the amount of capital of a company represented by its share capital consisting of shares having no par value.
"subsidiary company"	see "holding company".
"Supervision Order"	an order made by the Court of the nature of an order under section 311 of the Companies Act, 1948 of England and having the equivalent effects.

“surplus”

the amount by which its assets less its liabilities as shown in its accounts prepared pursuant to section 63 exceed its share capital account or its stated capital account or, where the company has shares of no par value and shares having a par value, its stated capital account and its share capital account.

“vesting order”

an order made pursuant to section 128.

“voluntary
winding up”

a winding up of a solvent company under section 125.

“wholly-owned
subsidiary company”

a company in respect of which its holding company is the beneficial owner (whether the registered holder of its shares or not) of all its issued shares.