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## CHAPTER 27

### COMPANIES

*Acts Nos. 19 of 1912; Ord. No. 3 of 1913, Acts Nos. 13 of 1961, 20 of 1966, 16 of 1972, 19 of 1977, 15 of 1978*

#### AN ACT RELATING TO COMPANIES

[21st September, 1912]

1. This Act may be cited as The Companies Act. Short title.
2. In this Act unless the context otherwise requires the following expressions have the meaning assigned to them (that is to say)— Interpretation.
  - “company” means a company formed and registered under this Act or an existing company;
  - “private company” means a company which by its articles—
    - (a) restricts the right to transfer its shares;
    - (b) limits the number of its members to 10, not including persons who are in the employment of the company; and
    - (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company:  
Provided that, where 2 or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition be treated as a single member; (*Added by Act 13 of 1961.*)
  - “articles” means the articles of association of a company as originally framed or as altered by special resolution;
  - “memorandum” means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act;

“document” includes summons, notice, order and other legal process and registers;

“share” means share in the share capital of the company and includes stock except where a distinction between stock and shares is expressed or implied;

“debenture” includes debenture stock;

“books and papers” and “books or papers” includes accounts, deeds, writings and documents;

“the Registrar of Companies” or “Registrar” means the person appointed by the Privy Council to perform the duty of registration of companies under this Act; (*Substituted by Act 15 of 1978.*)

“the court” used in relation to a company, means the court having jurisdiction to wind up the company;

“general rules” means general rules made under this Act and includes forms;

“prescribed” means as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules and as respects the other provisions of this Act, prescribed by the Privy Council;

“director” includes any person occupying the position of director by whatever name called;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of a company.

Prohibition of partnership exceeding certain number.

3. No company, association or partnership consisting of more than 10 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership or by the individual members thereof unless it be registered as a company under this Act.

#### PART I.—MEMORANDUM OF ASSOCIATION

Mode of forming incorporated company.

4. Any 10 or more persons or, where the company to be formed will be a private company, any 2 or more persons, associated for any lawful purpose may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration form an incorporated company (that is to say) either—

(a) a company having the liability of its members limited by the memorandum to the amount if any unpaid on the shares

respectively held by them (in this Act termed a company limited by shares); or

- (b) a company not having any limit on the liability of its members (in this Act termed a company unlimited). (*Amended by Act 13 of 1961.*)

**5. In the case of a company limited by shares—**

(1) The memorandum shall state—

- (a) the name of the company with “limited” as the last word of its name;
- (b) the address in Nuku’alofa or elsewhere in Tonga in which the registered office of the company is to be situate;
- (c) the objects of the company;
- (d) that the liability of the company is limited;
- (e) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

Memorandum of company limited by shares.

(2) No subscriber to the memorandum may take less than one share;

(3) Each subscriber must write opposite to his name the number of the shares he takes.

**6. In the case of an unlimited company—**

(1) The memorandum shall state—

- (a) the name of the company;
- (b) the address in Nuku’alofa or elsewhere in Tonga in which the registered office of the company is to be situate;
- (c) the objects of the company.

Memorandum of company unlimited.

(2) If the company has a share capital—

- (a) no subscriber of the memorandum may take less than one share;
- (b) each subscriber must write opposite to his name the number of shares he takes.

**7. The memorandum must be signed by each subscriber in the presence of one witness who must attest the signature.**

Signature of memorandum.

**8. A company may not alter the conditions contained in its memorandum except with the consent of the Privy Council.**

Alterations to memorandum.

**9. (1) There shall in the case of every company be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company:**

Registration of articles.

Provided always that before any company is registered the memorandum and the articles of association shall be submitted to the Privy Council for approval and the Privy Council shall have the power to approve, modify or reject the same; including but without prejudice to the foregoing generality, the power to specify those objects contained in the memorandum which may or may not be pursued; and a company shall only carry on business in accordance with the terms of its memorandum and articles of association as so approved or modified and in pursuance only of such objects in the memorandum as Privy Council so specifies may be pursued. (*Substituted by Act 16 of 1972.*)

(2) The articles shall state the number of members and the amount of share capital with which the company proposes to be registered.

(3) The articles shall—

(a) be divided into paragraphs numbered consecutively;

(b) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alterations  
of articles.

10. Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles and any alteration or addition so made shall be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution but all such alterations or additions must be submitted to the Privy Council for approval and the Privy Council shall have power to approve, modify or reject the same.

#### *General Provisions*

Effect of  
memoran-  
dum and  
articles.

11. (1) The memorandum and articles shall when registered bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member, his heirs executors and administrators to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum and articles shall be a debt due from him to the company.

Registration  
of memoran-  
dum and  
articles.

12. The memorandum and articles shall be delivered to the Registrar and he shall retain and register the same.

Effect of  
registration.

13. (1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and in the case of a limited company that the company is limited, and

in all cases he shall specify any alterations or modifications to the memorandum and articles of association ordered by Privy Council and shall also specify the objects contained in the memorandum which the company is permitted to pursue. (*Substituted by Act 16 of 1972.*)

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company shall be a body duly corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal, with such liability on the part of the members to contribute to the assets of the company in the event of it being wound up as is mentioned in this Act.

14. A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with that the association is a company authorized to be registered and duly registered under this Act.

Conclusive-  
ness of  
certificate of  
incorporation.

#### PART II.—DISTRIBUTION OF SHARE CAPITAL

15. (1) The shares or other interest of any member in a company shall be personal estate transferable in the manner provided by the articles of the company and shall not be of the nature of real estate.

Nature of  
shares.

(2) Each share in a company having a share capital shall be distinguishable by its appropriate number.

16. A certificate under the common seal of the company specifying any shares or stock held by any member shall be prima facie evidence of the title of the member to the shares or stock.

Certificate of  
shares or  
stock.

17. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in the register of members.

Definition of  
member.

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

18. (1) Every company shall keep in one or more books at its registered office a register of its members and enter therein the following particulars—

Register of  
members.

(a) the names and addresses and occupations (if any) of the members and in the case of a company having a share capital a

statement of the shares held by each member distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member;

- (b) the date at which each person was entered in the register as a member;
- (c) the date at which any person ceased to be a member.

(2) If a company fails to comply with this section it shall be liable to a fine not exceeding \$10 for every day during which the default continues and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Power of court to rectify register.

19. (1) If—

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

the person aggrieved or any member of the company or the company may apply to the court for rectification of the register.

(2) The application may be made by motion in the Supreme Court and the Court may either refuse the application or may order the rectification of the register and payment by the company of any damage sustained by the party aggrieved.

(3) On any application under this section the Court may decide the question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members and alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Registrar of Companies the Court when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the Registrar.

Register to be evidence.

20. The register of members shall be prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

Forgery, personation, unlawfully engraving plates, etc.

21. (1) If any person—

- (a) with intent to defraud, forges or alters or offers, utters, disposes or puts off knowing the same to be forged or altered any share, warrant or coupon or any document

purporting to be a share warrant or coupon issued in pursuance of this Act or by means of any such forged or altered share warrant, coupon or document purporting as aforesaid demands or endeavours to obtain or receive any share or interest in any company under this Act or to receive any dividend or money payable in respect thereof knowing the warrant, coupon or document to be forged or altered, or

- (b) falsely and deceitfully personates any owner of any share or interest in any company or of any share warrant or coupon issued in pursuance of this Act and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon or receives or endeavours to receive any money due to any such owner as if the offence were the true and lawful owner,

he shall be guilty of an offence and being convicted thereof shall be liable at the discretion of the court to imprisonment with hard labour for any term not less than 2 years and not exceeding 5 years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon or of any such blank share warrant or coupon or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone or other material, he shall be guilty of an offence and being convicted thereof shall be liable at the discretion of the Court to be imprisoned with hard labour for any term not exceeding 14 years and not less than 3 years.

### PART III.—MANAGEMENT AND ADMINISTRATION

22. (1) Every company shall have a registered office in Tonga to which all communications and notices may be addressed.

Registered  
office of  
company.

(2) Notice of the situation of the registered office and of any change therein shall be given to the Registrar of Companies who shall record the same.

(3) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding \$10 for every day during which it so carries on business.

Publication  
of name by  
limited  
company.

23. (1) Every limited company—

- (a) shall paint or affix and keep painted or affixed its name on the outside of every office or place in which its business is carried on in a conspicuous place in letters easily legible;
- (b) shall have its name engraved in legible characters on its seal; and
- (c) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the company and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a limited company does not paint or affix and keep painted or affixed its name in the mannered directed by this Act it shall be liable to a fine not exceeding \$10 for not so painting or affixing its name and for every day during which its name is not so kept painted or affixed and every director or manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to a like penalty.

(3) If any director or manager or officer of a limited company or any person on its behalf uses or authorizes the use of any seal purporting to be the seal of the company whereon its name is not so engraved as aforesaid or issues or authorizes the issue of any notice, advertisement or other official publication of the company or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods or issues or authorizes to be issued any bill of parcels, receipt or letter of credit of the company whereon its name is not so mentioned in manner aforesaid he shall be liable to a fine not exceeding \$100 and shall be further personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless the same is duly paid by the company.

*Meetings and Proceedings*

Meetings and  
proceedings.

24. (1) His Majesty may by Order in Council prescribe the conditions under which—

- (a) meetings and proceedings of companies shall be held;
- (b) statutory reports shall be prepared and issued;
- (c) extraordinary general meetings shall be held and requisitioned;
- (d) directors shall be qualified and appointed;
- (e) lists of directors shall be sent to the Registrar;
- (f) prospectuses shall be issued and filed;

- (g) shares shall be allotted and returns of allotments made;
  - (h) the time for issue of certificates shall be limited;
  - (i) registers of mortgages shall be kept;
  - (j) annual lists of members and summary of share capital shall be prepared;
  - (k) statements of liabilities and assets shall be prepared and forwarded to the Registrar;
  - (l) inspection of register of members and power to close register may be given;
  - (m) fees shall be chargeable and the amount thereof.
- (2) His Majesty may from time to time revoke, alter or add to any order so made.
- (3) Every order so made shall be published in the Gazette and shall be laid before the Legislative Assembly at its next meeting for approval, modification or alteration.
- (4) The order shall as from the date of publication in the Gazette or any later date mentioned in the order take effect as if it were enacted by the Legislative Assembly.

### Contracts

25. (1) Contracts on behalf of a company may be made as follows— Form of contracts.

- (a) any contract which if made between private persons would be by law required to be in writing and if made according to the law to be under seal may be made on behalf of the company in writing under the common seal of the company and may in the same manner be varied or discharged;
  - (b) any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the company in writing by any person acting under its authority express or implied and may in the same manner be varied or discharged;
  - (c) any contract which if made between private persons would by law be valid although made by parol on behalf of the company by any person acting under its authority express or implied and may in the same manner be varied or discharged.
- (2) All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto their heirs, executors or administrators as the case may be.
- (3) The provisions of the Contract Act relating to registration of agreements shall not apply to mortgages and charges registered with the Registrar of Companies. Cap. 26  
*(Inserted by Act 19 of 1977.)*

Bills of exchange and promissory notes.

26. 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 or by or on behalf of or on account of the company by any person acting under its authority.

*Inspection and Audit*

Investigation of affairs of company.

27. (1) The Privy Council may at any time in their discretion appoint one or more competent inspectors to investigate the affairs of any company and report thereon in such manner as the Privy Council may direct.

(2) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(3) An inspector may examine upon oath the officers and agents of the company in relation to its business and may administer an oath accordingly.

(4) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce or to answer any question relating to the affairs of the company he shall be liable to a fine not exceeding \$10 in respect of each offence.

(5) On the conclusion of the investigation, the inspectors shall report their opinion to the Privy Council and a copy of the report shall be forwarded by the Privy Council to the registered office of the company.

(6) All expenses of and incidental to the investigation if the same is made upon application shall be defrayed by the applicants unless the Privy Council direct the same to be paid by the company which the Privy Council is hereby authorized to do.

(7) The report shall be written or printed as the Privy Council may direct.

Power of company to appoint inspectors.

28. (1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Privy Council except that instead of reporting to the Privy Council they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed or to answer any question as they would have incurred if the inspector had been appointed by the Privy Council.

Report of inspectors to be evidence.

29. A copy of the report of any inspectors appointed under this Act authenticated by the seal of the company whose affairs have been

investigated shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

**30.** (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

Appointment and remuneration of auditors.

(2) If an appointment of auditors is not made at the annual general meeting the Privy Council may on the application of any member of the company appoint an auditor of the company for the current year and fix the remuneration to be paid him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed an auditor of the company.

(4) A person other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than 14 days before the annual general meeting and the company shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the shareholders either by advertisement or in any other mode allowed by the articles not less than 7 days before the annual general meeting.

Provided that if after notice of the intention to nominate an auditor has been so given an annual general meeting is called for a date 14 days or less after notice has been given the notice though not given within the time required by this provision shall be deemed to have been properly given for the purposes thereof and the notice to be sent or given by the company may instead of being sent or given within the time required by this provision be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting in which case the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor or auditors if any may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting except that the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors.

**31.** (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the

Powers and duties of auditors.

company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them and on every balance-sheet laid before the company in general meeting during their tenure of office and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required; and
- (b) whether in their opinion the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

(3) The balance-sheet shall be signed on behalf of the board by two directors of the company or if there is only one director by that director and the auditor's report shall be attached to the balance-sheet or there shall be inserted at the foot of the balance-sheet a reference to the report and the report shall be read before the company in general meeting and shall be open to inspection by any shareholder.

(4) Any shareholder shall be entitled to be furnished with a copy of the balance-sheet and auditor's report at a charge of 50 seniti.

(5) If any copy of a balance-sheet which has not been signed as required by this section be issued, circulated or published or if any copy of a balance-sheet be issued, circulated or published without either having a copy of the auditor's report attached thereto or containing such reference to that report as is required by this section the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall on conviction be liable to a fine not exceeding \$100.

Rights of preference shareholders as to receipt and inspection of reports, etc.

32. Holders of preference shares and debentures of a company other than a private company shall have the same right to receive and inspect the balance-sheet of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company. (*Amended by Act 20 of 1966.*)

Prohibition of carrying on business with fewer than ten or in case of a private company of two members.

33. If at any time the number of the members of a company is reduced in the case of a private company below 2 or in the case of any other company below 10 and it carries on business for more than 6 months while the number is so reduced every person who is a member of the company during the time that it so carries on business after those 6 months and is cognizant of the fact that it is carrying on business with fewer than 2 members or 10 members as the case may be shall be severally liable for the payment of the whole of the debts

of the company contracted during that time and may be sued for the same without joinder in the action of any other member.

#### *Service and Authentication of Documents*

34. A document may be served on a company by leaving it at or by sending it by post to the registered office of the company. Service of documents.

35. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company and need not be under its common seal. Authentication of documents.

#### PART IV.—WINDING UP

36. The winding up of a company shall be by the Court. Mode of winding up.

#### *Contributories*

37. In the event of a company being wound up every past and present member shall subject to the provisions of this section be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs charges and expenses of the winding up and for the adjustment of the rights of contributories among themselves: that is to say— Liability as contributories of present and past members.

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount if any unpaid on the shares in respect of which he is liable as a present or past member.

38. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up and in all proceedings for determining, and in all proceedings prior to the final determination of, the persons who are to be deemed contributors, includes any person alleged to be a contributory. Definition of contributory.

Nature of liability of contributory.

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

Contributories in case of death.

**40.** (1) If a contributory dies either before or after he has been placed on the list of contributories his personal representatives and his heirs and devisees shall be liable in the due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories the heirs or devisees need not be added by they may be added as and when the Court thinks fit.

(3) If the personal representatives make default in payment of any money ordered to be paid by them proceedings may be taken for administering the real and personal estate of the deceased contributory or either of them and of compelling payment of the money due.

Contributories in case of bankruptcy of member.

**41.** If a contributory becomes bankrupt either before or after he has been placed on the list of contributories then—

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up and shall be a contributory accordingly and may be called upon to admit to proof against the estate of the bankrupt or otherwise to allow to be paid out of his assets in due course of law any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liabilities to future calls as well as calls already made.

#### *Winding up by the Court*

Circumstances in which a company may be wound up by Court.

**42.** A company may be wound up by the Court—

- (a) if the company has by a special resolution resolved that the company be wound up by the Court;
- (b) if default is made in filing the statutory report or in holding the statutory meeting;
- (c) if the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- (d) if the number of members is reduced in the case of a private company below 2 or in the case of any other company below 10;
- (e) if the company is unable to pay its debts;

- (f) if the Court is of opinion that it is just and equitable that the company should be wound up;
- (g) if the Privy Council after any investigation ordered by it under the powers conferred under section 27 direct that the company be wound up by the Court.

**43. A company shall be deemed to be unable to pay its debts—**

- (a) if a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$100 then due has served on the company by leaving the same at its registered office a demand under his hand requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment decree or order of any Court in favour of any creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Company when deemed unable to pay its debts.

**44. The Court having jurisdiction to wind up a company under this Act shall be the Supreme Court.**

Court having jurisdiction.

**45. (1) An application to the Court for the winding up of a company shall be by petition presented subject to the provisions of this section either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors) contributory or contributories or by all or any of these parties together or separately:**

Provisions as to applications for winding up.

Provided that:

- (a) a contributory shall not be entitled to present a petition for the winding up of a company unless—
  - (i) either the number of members is reduced in the case of a private company below 2 or in the case of any other company below 10; or
  - (ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him and registered in his name for at least 6 months during the 18 months before the commencement of

the winding up or have devolved on him through the death of a former holder; and

- (b) a petition for the winding up of a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder nor before the expiration of 14 days after the last day on which the meeting ought to have been held; and
- (c) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor unless such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court.

(2) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory and a share has during the whole or any part of 6 months been held by or registered in the name of the wife or by or in the name of a trustee for the wife or for the husband the share shall for the purposes of this section be deemed to have been held by and registered in the name of the husband.

Commence-  
ment of  
winding up  
by Court.

**46.** A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Power of  
court to stay  
proceedings.

**47.** At any time after the presentation of a petition for winding up and before a winding up order has been made the company or any creditor or contributory may—

- (a) where any action or proceeding against the company is pending apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceedings;

and the Court to which application is so made may as the case may be stay or restrain the proceedings accordingly on such terms as it thinks fit.

Power of  
Court on  
hearing  
petitions.

**48.** (1) On hearing the petition the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it deems just but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who in the opinion of the Court are responsible for the default.

49. When a winding up order has been made no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

Actions stayed on winding-up order.

50. On the making of a winding up order a copy of the order must forthwith be forwarded by the company to the Registrar of Companies who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to Registrar.

51. The Court may as to all matters relating to a winding up have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Court may have regard to wishes of creditors or contributories.

52. The Court may at any time after an order for winding up on the application of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.

Power to stay winding up.

53. (1) Where the Court has made a winding up order there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form verified by affidavit and showing the particulars of its assets, debts and liabilities, the names and residences and occupations of the creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed or as the official receiver may require.

Statement of company's affairs to be submitted to official receiver.

(2) The statement shall be submitted and verified by one or more persons who are at the time of the winding-up order the directors and by the person who is at the time the secretary or other chief officer of the company or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the winding up order as the official receiver subject to the direction of the Court may require to submit or verify same.

(3) The statement shall be submitted within 14 days of the date of the order or within such extended time as the official receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid by

the official receiver out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable subject to an appeal to the Court.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section he shall be liable to a fine not exceeding \$20 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times on payment of the prescribed fee to inspect the statement submitted in pursuance of this section and to make a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or official receiver.

Report by  
official  
receiver.

54. (1) Where the Court has made a winding up order the official receiver shall as soon as practicable after receipt of the statements of the company's affairs submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities; and
- (b) if the company has failed as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion or failure of the company or the conduct of the business thereof.

(2) The official receiver may also if he thinks fit make a further report or further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any director or other officer of the company in relation to the company since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the Court.

#### *Powers of Court*

Rules of  
Court.

55. It shall be lawful for the Chief Justice of Tonga to make rules of Court for carrying this Act into effect and in particular for all or any of the following matters (that is to say)—

- (a) the settlement of lists of contributories and application of assets;
- (b) the power to require delivery of property;
- (c) the power to order payment of a debt by a contributory;
- (d) the power to make calls;
- (e) the power to exclude creditors not proving in time;

- (f) the adjustment of rights of contributories;
- (g) the power to order costs;
- (h) the power to summon persons suspected of having property of the company;
- (i) the power to order public examination of promoters, directors etc.;
- (j) the power to arrest absconding contributories;
- (k) the power to assess damages against delinquent directors etc.;
- (l) the power to direct meetings of creditors or contributories;
- (m) the inspection of books and papers of the company by creditors or contributories.

Every rule of Court made in pursuance of this section shall be laid before the Legislative Assembly at the meeting thereof held next after the rule is made and shall come into operation and the Assembly shall have power to approve modify or rescind the same.

**56.** (1) When the affairs of the company have been completely wound up the Court shall make an order that the company is dissolved from the date of the order and the company shall be dissolved accordingly. Dissolution  
of company.

(2) The order shall be reported by the liquidator to the Registrar of Companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding \$10 for every day during which he is in default.

**57.** (1) In winding up there shall be paid in priority to all other debts— Preferential  
payments.

- (a) all rates due from the company at the commencement of the winding up and having become due and payable within 12 months next before that date and all assessed taxes land tax property or income tax and licences which may be assessed on or be due or payable by the company and not exceeding in the whole one year's assessment;
- (b) all wages or salary of any clerk or servant in respect of services rendered to the company during 4 months before the said date not exceeding \$100; and
- (c) all wages of any workman or labourer not exceeding \$50 whether payable for time or for piece work in respect of services rendered to the company during 2 months before the said date:

Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wage in a

lump sum at the end of the year of hiring he shall have priority in respect of the whole of such sum or a part thereof as the Court may decide to be due under the contract proportionate to the time of service up to the said date.

(2) The foregoing debts shall—

(a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are sufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to the charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided always that in respect of any moneys paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

Fraudulent preference.

**58.** (1) Any conveyance mortgage delivery of goods payment execution or other act relating to property which would if made or done by or against any individual be deemed in his bankruptcy a fraudulent preference shall if made or done by or against a company be deemed in the event of its being wound up a fraudulent preference of its creditors and be invalid accordingly.

(2) For the purpose of this section the presentation of a petition for winding up in the case of a winding up by the Court shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Avoidance of attachment, etc.

**59.** Where any company is being wound up by the Court any attachment sequestration distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

**60.** Where a company is being wound up, a floating charge on the undertaking or property of the company created within 3 months of the commencement of the winding up shall unless it is proved that the company immediately after the creation of the charge was solvent be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5 per centum per annum.

Effect of floating charge.

**61.** (1) The liquidator may with the sanction of the Court do the following things or any of them—

General scheme of liquidation may be sanctioned.

- (a) pay any class of creditors in full;
- (b) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future certain or contingent ascertained or sounding only in damages against the company or whereby the company may be rendered liable;
- (c) compromise all calls and liabilities to calls debts and liabilities capable of resulting in debts and all claims present or future certain or contingent ascertained or sounding in damages only subsisting or supposed to subsist between a company and a contributory or alleged contributory or other debtor or person apprehending liability to the company and all questions in any way relating to or affecting the assets or the winding up of the company on such terms as may be agreed and take any security for the discharge of any such call debt liability or claim and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers set out in this section shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any powers.

**62.** If any person on examination on oath authorized under this Act in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act wilfully and corruptly gives false evidence he shall be liable to the penalties for wilful perjury.

Penalty for perjury.

**63.** Where any company is being wound up all books and papers of the company and of the liquidators shall as between the contributories of the company by prima facie evidence of the truth of all matters purporting to be therein recorded.

Books of company to be evidence.

Disposal of books and papers of company.

**64.** (1) When a company has been wound up and is about to be dissolved the books and papers of the company and of the liquidators may be disposed of in such way as the Court directs.

(2) After 5 years from the dissolution of the company no responsibility shall rest upon the company or the liquidators or any person to whom the custody of the books and papers has been committed by reason of the same not being forthcoming to any person claiming to be interested in them.

Power of Court to declare dissolution void.

**65.** (1) Where a company has been dissolved the Court may at any time within 2 years of the date of the dissolution on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested make an order upon such terms as the Court thinks fit declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made within 7 days after the making of the order to file with the Registrar of Companies an office copy of the order and if that person fails to do so he shall be liable to a fine not exceeding \$10 for every day during which the default continues.

Information as to liquidation pending.

**66.** (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall at such intervals as may be prescribed until the winding up is concluded send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times on payment of the prescribed fee to inspect the statement and to receive a copy thereof or extract therefrom but any person untruthfully so stating himself to be a creditor or a contributory shall be guilty of a contempt of court and shall be punishable accordingly upon the application of the liquidator or the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding \$100 for each day during which the default continues.

#### *Removal of defunct Companies from Register*

Registrar may strike defunct company off register.

**67.** (1) Where the Registrar of Companies has reasonable cause to believe that a company is not carrying on business or in operation he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto he shall within 14 days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer has been received thereto and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in the Gazette with a view of striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation or does not within one month after sending the second letter receive any answer he may publish in the Gazette and send to the company by post a notice that at the expiration of 3 months from the date of that notice the name of the company mentioned therein will unless cause be shown to the contrary be struck off the register and the company will be dissolved.

(4) If in any case where a company is being wound up the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months after notice by the Registrar demanding the returns has been sent by post to the company or to the liquidator at his last known place of business the Registrar may publish in the Gazette and send to the company a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the Registrar may unless cause to the contrary is previously shown by the company strike its name off the register and shall publish a notice thereof in the Gazette and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that the liability (if any) of every director managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register the court on the application of the company or member or creditor may be satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just so to do order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office or if no office has been registered to the care of some director or officer of the company or if there be no

director or officer of the company whose name and address are known to the Registrar of Companies may be sent to each of the person who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

PART V

*Companies Established Outside Tonga*

Require-  
ments as to  
companies  
incorporated  
outside  
Tonga.

68. (1) Every company incorporated outside the Kingdom which establishes a place of business within Tonga shall within one month from the establishment of the place of business pay a registration fee of \$10 and file with the Registrar of Companies—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not written in the English language a certified translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in Tonga authorized to accept on behalf of the company service of process and any notices required to be served on the company;

and in the event of any alteration being made in any instrument or in the directors or in the names or addresses of any such persons as aforesaid the company shall within the prescribed time file with the Registrar of Companies a notice of the alteration.

(2) The Registrar shall in each case submit to Privy Council the documents filed with him in accordance with the provisions of subsection (1) of this section; and Privy Council shall have the power to specify which of its objects the company may or may not pursue in Tonga and the Registrar shall advise the company accordingly; and a company registered in terms of this section shall only carry on business in Tonga in pursuance of such objects as Privy Council so specifies may be pursued. (*Inserted by Act 16 of 1972.*)

(3) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(4) If any company to which this section applies fails to comply with any of the requirements of this section the company and every officer or agent of the company shall be liable to a fine not exceeding \$100 or in the case of a continuing offence \$10 for every day during which the default continues.

(5) For the purposes of this section—

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“place of business” includes a share transfer or share registration office;

“director” includes any person occupying the position of director by whatever name called;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any share or debenture of the company.

(6) There shall be paid to the Registrar of Companies for registering any document required by this section to be filed with him a fee of 50 seniti or such smaller fee as may be prescribed.

#### PART VI.—SUPPLEMENTAL

##### *Legal Proceedings, Offences, etc.*

69. All offences under this Act made punishable by any fine shall be prosecuted before the Supreme Court. Legal proceedings.

70. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings or in or towards the rewarding the person on whose information or at whose suit the fine is recovered. Subject to any such direction all fines under this Act shall notwithstanding anything in any other Act be paid into the Treasury. Application of fines.

71. Where a limited company is plaintiff in any action or other legal proceeding any judge having jurisdiction in the matter may if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence require sufficient security to be given for those costs and may stay all proceedings until the security is given. Costs in actions by certain limited companies.

72. In any proceeding against a director or person occupying the position of a director of a company for negligence or breach of trust if it appears to the Court that the director or person is or may be liable in respect of the negligence or breach of trust but has acted honestly and reasonably and ought fairly to be excused for the negligence or breach of trust the Court may relieve him either wholly or partly from his liability on such terms as the Court may think proper. Power of Court to grant relief in certain cases.

Penalty for  
false  
statement.

73. If any person in any return report certificate balance-sheet or other document required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material 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 with or without hard labour and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that the fine imposed shall not exceed \$200.

Penalty for  
improper use  
of name.

74. If any person or persons trade or carry on business under the name or title of which "limited" is the last word that person or those persons shall unless incorporated with limited liability be liable to a fine not exceeding \$10 for every day upon which that name or title has been used.

British  
subject or  
foreigner not  
to be a  
member  
without the  
consent of  
the Privy  
Council.

75. It shall not be lawful for any British subject or foreigner to be a member of or hold any shares in any company registered under the provisions of this Act and of which the persons applying for registration are wholly Tongans, without the consent of and subject to the conditions imposed by the Privy Council.

CHAPTER 27

COMPANIES

SECTION 24—Company Rules

ARRANGEMENT OF RULES

RULE

1. Short title.
  2. Interpretation.
  3. Prospectus.
  4. Directors.
  5. Allotment of shares.
  6. Return of shares allotted.
  7. Limitation of time for issue of certificates.
  8. First general meeting.
  9. Annual general meeting.
  10. Extraordinary general meeting.
  11. Meetings and votes.
  12. Minutes.
  13. Annual return.
  14. Auditing.
  15. Registration of mortgages and charges.
  16. Entry of satisfaction.
  17. Index to register of mortgages and charges.
  18. Inspection and copies of register of members.
  19. Inspection of documents.
  20. Prosecutions.
  21. Unlawful dealing with register etc.
- SCHEDULE: Fees

*Made by Her Majesty in Council on 23rd April, 1918*

*R.R. 33/29, G.S. 19/72, G.S. 73/77, G. 139/77, G.S. 10/84*

1. These rules may be cited as the Company Rules. Short title.
2. In these rules the following expressions have the meaning hereby assigned to them— Interpretation.
  - “the Act” means the Companies Act;
  - “articles” means the articles of association of a company as originally framed or as altered by special resolution;
  - “company” means a company formed and registered under the Act or a company incorporated outside the Kingdom which establishes a place of business within Tonga under section 68 of the Act. *(Substituted by G.S. 10/84.)*
  - “the Court” means in relation to a company the Court having jurisdiction to wind up that company;
  - “director” includes any person occupying a position of director by whatever name called;

“memorandum” means the memorandum of association of a company as originally framed or as altered in pursuance of section 8 of the Act;

“prescribed” means prescribed by the Act or by these rules;

“prospectus” means any notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of a company;

“registrar” means the officer appointed by the Privy Council to perform the duties in connection with the registration of companies;

“special resolution” means a resolution which is passed by a majority of not less than three-fourths of such members entitled to vote as are present at a general meeting of which notice specifying the intention to propose such resolution has been duly given and which said resolution is subsequently confirmed by a majority of such members entitled to vote as are present at a second general meeting duly convened and held not less than 14 days nor more than one month after the date of the former meeting.

**Prospectus.** 3. (1) Every prospectus issued in reference to a company or intended company shall be dated and that date shall unless the contrary be proved be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company shall be filed for registration with the registrar before the date of its publication and no prospectus shall be issued until a copy of the same has been so filed.

(3) The registrar shall not register any prospectus unless it is dated and the copy thereof signed as required by this rule.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this rule.

(5) If a prospectus is issued without a copy thereof being so filed, the company and every person who is knowingly a party to the issue of the prospectus shall be liable to a fine not exceeding \$6 for every day from the date of the issue of the prospectus until a copy thereof is so filed.

**Directors.** 4. (1) A person shall not be capable of being appointed a director by the articles and shall not be named as a director in any prospectus issued regarding the company unless before the registration of the articles of association or the publication of such prospectus he has—

(a) signed and filed with the registrar a consent in writing to act as such director; and

(b) in the case of a company which is not a private company, either signed the memorandum for a number of shares not less than 2 or signed and filed with the registrar an agreement in writing to take from the company and pay for at least 2 shares. (*Amended by G.S. 73/77.*)

(2) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding \$40.

(3) Every company shall keep at its registered office a register containing the names, addresses and occupations of the directors or managers and shall from time to time notify to the registrar any change among its directors or managers.

(4) If default is made in complying with this rule the company shall be liable to a fine not exceeding \$6 for every day during which such default continues and every director and manager of the company who knowingly authorizes or permits the default shall be liable to the like penalty.

5. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the following conditions have been complied with, namely—

Allotment of shares.

(a) the amount (if any) named by the memorandum or articles of association as the minimum subscription upon which the directors may proceed to allotment, or

(b) if no amount is so named then the whole amount of the share capital so offered for subscription,

has been subscribed and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription has been paid to and received by the company.

(2) The whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

(4) If the conditions aforesaid have been complied with on the expiration of 3 months after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to them without interest and if any such money is not so repaid within 4 months after the issue of the prospectus the directors of the company shall be jointly and severally liable to repay such money with interest at the rate of 5 per centum per annum from the expiration of the fourth month.

(5) Any condition in any agreement or articles in contravention of the requirements of this rule shall be void.

6. (1) Every company shall file with the registrar within one month after it has made any allotment of its shares a return of the allotments stating the number and nominal amount of the shares allotted and the amount paid or due and payable in respect of each share.

Return of shares allotted.

(2) If default is made in complying with the requirements of this rule every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding \$6 for every day during which the default continues:

Provided that in case of default in filing with the registrar the return required by this rule, the company or any person liable for the default may apply to the Court for relief and the Court if satisfied that the omission to file the return was accidental or due to inadvertence or that it is just to grant relief may make such order extending the time for the filing of the return as the Court may think proper.

7. (1) Every company shall within 2 months after the allotment of any of its shares or debentures and within 2 months after the registration of the transfer of any such shares or debentures complete and have ready for delivery the certificates of all shares and the debentures allotted or transferred.

Limitation of time for issue of certificates.

(2) If default is made in complying with the requirements of this rule the company and every director, manager, secretary and other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding \$6 for every day during which default continues.

## MEETINGS

First general meeting.

8. (1) Every company shall within a period of not less than one month nor more than 3 months from the date of its registration hold a general meeting of the members of the company which shall be called and is referred to in section 42 of the Act as the statutory meeting.

(2) The directors shall at least 7 days before the day on which such meeting is held forward to every member of the company a report (referred to in section 42 of the Act as the statutory report) and shall file with the registrar a copy thereof certified in the manner required by this rule.

(3) Such report shall be certified by not less than 2 directors or where there are less than 2 directors by the sole director and the manager and shall state—

- (a) the total number of shares allotted specifying whether such shares are fully or partly paid up and in the case of shares partly paid up the extent to which they are so paid up;
- (b) the total amount of cash received by the company in respect of all the shares allotted;
- (c) the amount of the receipts of the company on account of its capital whether from shares or debentures and of the payments made thereout up to a date within 7 days of the date of the report together with full particulars of the balance remaining in hand and an account or estimate of the preliminary expenses of the company;
- (d) the name, addresses and occupations of the directors, manager (if any) and secretary of the company.

(4) Such report shall so far as regards the shares allotted and the cash received in respect of such shares and the receipts and payments of the company be certified as correct by the auditors or auditor of the company.

(5) The directors shall cause a list showing the names and addresses of members of the company and the number of shares held by them respectively to be produced at the beginning of the meeting and to remain open for inspection by any member of the company during the continuance of the meeting.

(6) If a petition is presented to the Court in manner provided by section 45 of the Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting the Court may instead of directing the company to be wound up give directions that the statutory report be filed within a specified time or order a meeting to be held or make such other order as may appear just.

Annual general meeting.

9. (1) A general meeting of every company shall be held once at least in every calendar year and not more than 15 months after the holding of the last general meeting and if not so held the company and every director, secretary and other officer of the company who is knowingly a party to neglect or omission to hold such meeting shall be liable to a fine not exceeding \$40.

(2) When default has been made in holding a meeting of the company in accordance with the requirements of this rule the Court may on the application of any member of the company call a general meeting of the company or direct such a meeting to be called.

Extraordinary general meeting.

10. (1) The directors of a company shall on a written requisition signed by the holders of not less than one-tenth of the issued share capital of the company upon which all sums then due have been paid proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting and be deposited at the registered office of the company.

(3) If within 21 days from the date of the requisition being so deposited the directors do not cause a meeting to be held, the shareholders who signed the requisition may themselves proceed to hold the meeting but such meeting shall not be held after 3 months from the date on which the requisition was deposited at the registered office of the company.

**11. In default of and subject to any regulations in the articles—**

Meetings and  
votes.

- (a) a meeting of a company may be called by 7 days notice in writing served on every member;
- (b) 5 members may call a meeting;
- (c) any person elected by the members present at a meeting may be chairman thereof;
- (d) every member shall have one vote.

**12. (1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in a book kept for that purpose.** Minutes.

(2) Any minute if purporting to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting shall be evidence of the proceedings which it records.

(3) Until the contrary is proved every meeting of the company or of directors or managers in respect of the proceedings at which minutes have been made as required by this rule shall be deemed to have been duly held and all proceedings had thereat to have been duly had.

**13. (1) Every company shall once in each year make a return stating the names and addresses of all persons who on the 10th day after the general meeting are members of the company and of all persons who have ceased to be members since the date of the last return or (in the case of a first return) of the incorporation of the company. Such return shall state the number of shares held by each of the existing members of the company at the date of the return and shall specify the shares transferred since the date of the last return or (in the case of a first return) of the incorporation of the company together with the respective dates of registration of the transfers.** Annual  
return.

(2) Such return must also include a summary containing the following particulars—

- (a) the names and addresses of the persons who at the date of the return are directors of the company or occupy the position of directors by whatever name called; and
- (b) the total amount of debt due from the company in respect of all mortgages and charges which are required by these rules to be registered with the registrar;
- (c) a statement in the form of a balance-sheet made up to a date not earlier than 10 days before the date of the return audited by the auditors or auditor of the company and containing a summary of the company's share capital its liabilities and assets giving such particulars as will disclose the general nature of those liabilities and assets and how the values of the fixed assets have been arrived at but the balance need not include a statement of profit and loss;
- (d) the above return and summary must be contained in a separate part of the register of members and the company must forthwith forward to

the registrar a copy of such return and summary signed by the manager or by the secretary of the company;

- (e) if a company makes default in complying with the requirements of this rule it shall be liable to a fine not exceeding \$6 for every day during which the default continues and every director and manager of the company who knowingly or wilfully authorizes or permits the default shall be liable to the like penalty.

**Auditing.**

14. Every company shall annually make out a balance sheet and submit the same together with all books, accounts and vouchers of the company to the auditors. Such balance sheet shall be made up to a date 14 days before its submission and shall be signed by 2 directors or if there is only one director by that director.

**Registration of mortgages and charges.**

15. (1) Every mortgage or charge of any description created by any company after 1 January 1918 shall so far as any security on the company's property or undertaking is thereby conferred be void against the liquidator and any creditor of the company unless the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced are delivered to the registrar for registration in the manner hereinafter prescribed within 21 days after the date of its creation but without prejudice to any contract or obligation for repayment of the money thereby secured and when a mortgage or charge becomes void under this rule the money secured thereby shall immediately become payable.

(2) The registrar shall keep with respect to each company a register of all the mortgages and charges created by the company after 1 January 1918 which are by these rules required to be registered and shall on payment of the prescribed fee enter in such register in regard to every such mortgage or charge the date of creation the amount secured by it short of particulars of the property mortgaged or charged and the names of the mortgagees or persons entitled to the charge.

(3) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this rule and such certificate shall be conclusive evidence that the requirements of this rule as to registration have been complied with.

(4) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company.

(5) The Court on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required or that the omission or mis-statement of any particular with respect to any such mortgage or charge was accidental or due to inadvertence or is not of a nature to prejudice the position of creditors or shareholders of the company or that on other grounds it is just and equitable to grant relief may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient order that the time for registration be extended or, as the case may be, that the omission or mis-statement be rectified.

(6) Any company making default in complying with the requirement of this rule and any director, manager or other officer of the company knowingly and wilfully authorizing or permitting such default to be made by the company shall be liable to a fine not exceeding \$100.

16. The registrar may on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied enter or cause to be entered a memorandum of satisfaction on the register and shall if required furnish the company with a copy thereof. Entry of satisfaction.
17. The registrar shall keep a chronological index of the mortgages or charges registered with him under rule 15. Index to register of mortgages and charges.
18. (1) With respect to a register kept pursuant to Section 18 of the Act—  
(a) no person is entitled to inspect the register of members of a private company except a member of that company, such inspection to be made free of charge and only during ordinary business hours; and  
(b) any person is entitled to inspect the register of members of a company other than a private company on the payment of 40 seniti for each inspection, such inspection to be made only during ordinary business hours. Inspection and copies of register of members.
- (2) With respect to a register kept pursuant to Section 18 of the Act and to return and summary referred to in Rule 13 of these Rules—  
(a) no person is entitled to a copy of or an extract from the register, return or summary relating to the affairs of a private company except a member of that company; and  
(b) any person is entitled to a copy of or an extract from the register, return or summary relating to the affairs of a company other than a private company on the payment of 20 seniti or less as the company may prescribe for every 72 words or part thereof. (*Substituted by G.S. 10/84.*)
19. (1) With respect to a register or document directed either by the Act or by these Rules to be kept by or filed with the Registrar— Inspection of Documents.  
(a) no person is entitled to a copy of or an extract from or to inspect the register or document (excluding certificate of incorporation) relating to the affairs of a private company except a member or by written authority of a member of that company or by an Order of the Court; and  
(b) any person is entitled to a copy of or an extract from or to inspect the register or document relating to the affairs of a company other than a private company, and any extract or copy issued by the registrar may be certified by him on payment of the respective fees prescribed in the Schedule to these Rules.
- (2) A copy of a document or of an extract from any document kept by the registrar and certified by him to be a true copy shall in all legal proceedings be admissible in evidence as of equal validity with the original document.
- (3) The fees specified in the Schedule to these rules shall be paid to the registrar in respect of the several matters in such Schedule enumerated and all such fees shall be paid by him into the Treasury.
20. All offences under these rules made punishable may be prosecuted in the Magistrate's Court for the district wherein the registered office of the company is situated. Prosecutions.

Unlawful  
dealing with  
register etc.

21. (1) A person who, without lawful justification, has in his possession a copy of or an extract from or who inspects a register, return, summary or document which he is not entitled to have or to inspect by virtue of sub-rule (1)(a) and sub-rule (2)(a) of Rule 18, or by virtue of sub-rule (1)(a) of Rule 19 of these Rules, commits an offence and is liable to a fine not exceeding \$50 or to a term of imprisonment not exceeding 6 months or both.

(2) A person who, without just cause, infringes the entitlement granted under sub-rule (1)(b) and sub-rule (2)(b) of Rule 18, and under sub-rule (1)(b) of Rule 19 of these Rules, commits an offence and is liable to a fine not exceeding \$50 and to a further fine not exceeding \$50 for every day the offence continues.

(Inserted by G.S. 10/84.)

### THE SCHEDULE

(Rule 19(3))

#### Table of Fees to be paid to the Registrar

For registration of a company whose nominal share capital does not exceed \$5,000 .....	20.00
For registration of a company whose nominal share capital exceeds \$5,000 for every \$1,000 or part thereof, up to \$10,000.....	4.00
For every \$1,000 or part thereof, in excess of \$10,000 up to \$100,000	2.00
For every \$1,000 or part thereof, in excess of \$100,000.....	1.20
Provided that the maximum registration fee for any one company does not exceed \$1000.00. The aforesaid scale of fees would also apply for any upward revision in the share capital of a registered company.	
For registration of change of name of company.....	20.00
For filing or registration of any document by the Act or these rules required or authorised to be filed or registered other than the Memorandum or Articles.....	2.00
For inspection of any document directed either by this Act or these rules to be filed or registered by the Registrar .....	4.00
For a copy of Certificate of Incorporation.....	2.00
For Certification of any copy document.....	2.00
Copying charges, per folio of 72 words.....	0.40

(Substituted by G.S. 10/84)

**SECTION 55—Companies Winding Up Practice Direction**

*Made by the Acting Chief Justice  
G. 199/86  
[31 October, 1986]*

The following practice direction is issued by Acting Chief Justice Mr David Tupou for the guidance of those using the Winding up provisions of the Companies Act:

**PROCEDURE**

1. If particulars of the debt have already been supplied to a debtor it is permissible to state in Notice of Demand that the debt arises pursuant to: "goods supplied full particulars of which have already been supplied to you".

Service of  
Notice of  
Demand on  
Debtor.

However should the debtor query this statement full particulars of goods supplied less payments made must be supplied to him once asked for. This must be done before further steps are taken to proceed to wind the debtor company up.

The notice of demand may be signed on behalf of a creditor by its authorised agent or solicitor.

2. After the expiry of three weeks from service of the notice of demand if there has been no payment or security obtained to the reasonable satisfaction of the creditor a petition to wind up the Company may be presented to the Court. Petitions for companies based on islands other than Tongatapu can be filed at Nuku'alofa. However the trial judge has a discretion as to where the hearing will occur. Before the petition is heard at a call-over it must be supported by:

Winding-Up  
Petition.

- affidavit of service
- affidavit of verification

The petition may be accepted for filing by the Court supported only by the affidavit of service but it cannot be heard at call-over until the affidavit of verification of the petition is also filed with the Court.

3. The petition should be given a Chambers date for preliminary call-over by the Registrar and then served on the respondent. However, the call-over date must be not less than 21 days from the date of service upon the respondent. The petition served upon the respondent must advise him of the need to file sworn affidavits 7 days before the call-over date if he wishes to defend the petition. A suitable notice would be as set out in the Schedule. The affidavits must show that the petition is disputed in good faith and upon substantial grounds in order to prevent advertisement of the petition and a hearing date being allocated.

Chambers  
Date and  
Filing of  
Affidavits.

4. At a preliminary call-over in Chambers the Judge can ascertain whether or not there is a genuine dispute. If so he may stay or dismiss the petition. To save expense he could decide the dispute as to the debt. However usually the petition will be adjourned to enable the question to be decided by action. The judge has the power to order the amount of the alleged debt to be paid into Court.

Call-Over in  
Chambers.

If at call-over no cause is presented that shows the petition is disputed in good faith and upon substantial grounds a hearing date for the petition can be set by the Court and leave to advertise the petition granted.

Advertise-  
ment of  
Petition.

5. The date of hearing of the petition must be advertised in the Tongan Chronicle to give notice to other creditors. The date of hearing cannot be earlier than 14 days from date of advertisement. Advertisement must occur not later than 6 months from call-over.

Fresh  
Grounds of  
Dispute.

6. At the hearing the respondent may still bring up grounds of dispute not raised at call-over. Should the respondent be successful in having the petition stayed because of a point not raised at preliminary call-over the Court has the discretion to order that the stay be subject to payment of expenses incurred by the petitioner bringing witnesses to the hearing.

Hearing of  
Petition.

7. At the hearing, in the absence of a dispute as to the debt made in good faith upon substantial grounds the Court may make an order winding up the respondent.

SCHEDULE

To:.....Limited.....

Take notice that if no grounds are presented to the Judge at the Call-Over date of this matter that show this petition is disputed in good faith and upon substantial grounds a hearing date will be set for the winding up of your company.

The hearing date of this petition will then be advertised in the Tongan Chronicle not later than 6 months after the call-over date. The petition may be heard by the Court at any date after 14 days have lapsed from the date of advertisement.

If you wish to dispute the debt which is the subject-matter of this petition sworn affidavits must be filed on your behalf by 19..... seven (7) days before the call-over date.

If you are in any doubt as to your position you should consult your legal advisor immediately.