Corporations Act 1989

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This compilation is in 5 volumes

Volume 1: Sections 1-82, Corporations Law sections 1-111G
Volume 2: Section 82, Corporations Law sections 112-458
Volume 3: Section 82, Corporations Law sections 460-864
Volume 4: Section 82, Corporations Law sections 865-1273
Volume 5: Section 82, Corporations Law sections 1274-1362, Schedules 1-3, Endnotes

Each volume has its own contents

Section 82 of the *Corporations Act 1989* includes the Corporations Law. The Corporations Law appears in this compilation as part of the Act.

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This is a compilation of the *Corporations Act 1989* that shows the text of the law as amended and in force on 18 December 1990 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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NOTE: Section 82 of the Corporations Act 1989 contains the Corporations Law. The material in this volume is a continuation of section 82 of the Corporations Act 1989 and the Corporations Law from the previous volume.

Chapter 2—Constitution of companies

Part 2.1—Restrictions on forming certain entities

112 Outsize partnerships and associations

(1) An outsize partnership or association must not be formed unless it is incorporated or formed under:
  (a) a law of the Commonwealth or of this or another jurisdiction; or
  (b) letters patent.

(2) A person must not participate in the formation of an outsize partnership or association unless it is incorporated or formed under:
  (a) a law of the Commonwealth or of this or another jurisdiction; or
  (b) letters patent.

(3) For the purposes of this section, a partnership or association is outsize if, and only if, it:
  (a) has for one or more of its objects the acquisition of gain by the partnership or association or any of its members; and
  (b) consists of more than:
    (i) if the partnership or association is formed to carry on a profession or calling of a kind specified in an application order—the number of persons specified in the application order in relation to that kind of profession or calling; or

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(ii) in any other case—20 persons.

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Part 2.2—Registration of companies

Division 1—Incorporation by registration

114 Formation of companies

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

115 Classes of companies

(1) A company registered under this Division may be:

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company.

(2) A mining company registered under this Division may be a no liability company.

116 Proprietary companies

A company having a share capital (other than a no liability company) may be incorporated as a proprietary company if a provision of its constitution:

(a) restricts the right to transfer its shares;

(b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting a person who is employed by the company or any of its subsidiaries or a person who was, while so employed, and thereafter has continued to be, a member of the company);

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

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

117 Requirements as to memorandum

(1) The memorandum of a company shall be printed, divided into numbered paragraphs, dated, and signed by the persons desiring the formation of the company, and shall, in addition to other requirements, state:

(a) the name of the company or that the company's name on registration is to be its registration number;

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

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

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

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

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(f) if the company is a no liability company—that the acceptance of shares in the company does not constitute a contract to pay calls in respect of the shares or to make any contribution towards the company's debts and liabilities;

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

(h) that those subscribers wish to form a company pursuant to the memorandum and (if the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2) The memorandum of a company may state the objects of the company.

(3) Each subscriber to the memorandum shall:

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

(i) the number of shares (being at least one) that the subscriber agrees to take; and

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

(b) in any case—sign the memorandum in the presence of at least one witness (not being another subscriber).

(4) A witness to the signature of a subscriber to the memorandum shall attest the signature and add his or her address.

(5) A statement in the memorandum of a company limited by shares that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

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118 Registration application

(1) Persons desiring the incorporation of a company may lodge an application in the prescribed form for the registration of the company under this Division.

(2) The application must:

(a) state that it is desired to incorporate the company under the Corporations Law of this jurisdiction; and

(b) contain the prescribed information and matters; and

(c) be accompanied by:

(i) in any case—the prescribed documents (if any); and

(ii) unless subsection (3) applies—the memorandum, and the articles (if any), of the proposed company.

(3) If:

(a) the proposed company's memorandum states the matters that it is required by virtue of paragraphs 117(1)(a), (b), (c) and (g) to state; and

(b) the proposed company's constitution contains proprietary company provisions;

the application shall:

(c) set out the matters stated in the memorandum pursuant to those paragraphs; and

(d) state that the constitution contains proprietary company provisions.

(4) The application shall be signed by:

(a) if subsection (3) applies—each subscriber; or

(b) otherwise—at least one subscriber;

to the proposed company's memorandum, in the presence of at least one witness (not being another subscriber).

(5) A witness to a signature that is required by this section shall attest the signature and add his or her address.

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119 Power to require production of unlodged memorandum

(1) Where an application under section 118:

(a) is not accompanied by the proposed company's memorandum; and

(b) purports to comply with subsection 118(3);

the Commission may, even if it has no reason to suspect that the application was not made in accordance with that section, refuse to register the company under this Division unless and until the memorandum has been lodged.

(2) Where:

(a) a memorandum is lodged under subsection (1); and

(b) the Commission registers the company but is not required to register the memorandum;

the Commission shall, when it issues a certificate to the company under section 121, give the memorandum to the company.

120 Registration

(1) Subject to this Law, where the Commission is satisfied that an application has been made in accordance with section 118, it shall:

(a) register the company by registering:

(i) in any case—the application; and

(ii) unless the company is registered as a company limited by shares and as a proprietary company—the company's memorandum and articles (if any); and

(b) allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part, Part 4.1 or a law corresponding to this Part or Part 4.1.

(2) Subject to subsection 372(3), the Commission shall not register a company under this Division by a particular name unless that name is reserved under section 373 in respect of the company.

(3) Where an application under section 118:

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(a) is not accompanied by the proposed company's memorandum; and

(b) purports to comply with subsection 118(3);

the Commission may, unless it has reason to suspect to the contrary, assume without inquiry that:

(c) the application does so comply; and

(d) the persons who signed the application are the subscribers to the memorandum.

121 Certificate of registration

(1) On registering a company under this Division, the Commission shall prepare a certificate under its common seal that complies with this section and shall issue the certificate to the company.

(2) The certificate shall state that the company:

(a) is registered as a company under this Division of the Corporations Law of this jurisdiction; and

(b) because of that registration, is an incorporated company;

and shall specify the day of commencement of the registration.

(3) The certificate shall state that the company is:

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company; or

(e) a no liability company;

as the case requires.

(4) The certificate shall state that the company is a proprietary company or a public company, as the case requires.

(5) The Commission shall keep a copy of a certificate issued under this section, and subsections 1274(2) and (5) apply in relation to that copy as if it were a document lodged with the Commission.

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122 Effect of certificate

A certificate under the Commission's common seal stating that a specified company has been registered under this Division is conclusive evidence that:

(a) all requirements of this Law in respect of:

(i) registration of the company as a company under this Division; and

(ii) matters preceding or incidental to the registration;

have been complied with;

(b) the company is duly registered under this Division; and

(c) the day of commencement of the registration is the day (if any) specified as such in the certificate.

123 Incorporation

(1) Subject to this Law, on and from the day specified in a certificate under section 121 as the day of commencement of a company's registration under this Division, the subscribers to the company's memorandum, together with such other persons as from time to time become members of the company, are an incorporated company by the name stated in the memorandum.

(2) A company registered under this Division:

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

(b) is capable of suing and being sued;

(c) has perpetual succession;

(d) shall have a common seal; and

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

124 Members

(1) The subscribers to a Division 1 company's memorandum shall be deemed to have agreed to become members of the company and, on the company's incorporation:

(a) each becomes such a member; and

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(b) the name of each shall be entered in the company's register of members.

(2) A Division 1 company's members are, as such, liable to contribute in accordance with this Law to the company's property in a winding up of the company.

125 Articles of association

(1) There may, in the case of a company limited by shares (other than a Table A proprietary company) or a no liability company, and there shall, in the case of a company limited by guarantee, a company limited both by shares and by guarantee or an unlimited company, be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

(2) At any time before the registration under this Division of a Table A proprietary company, the subscribers to the company's memorandum may sign articles prescribing regulations for the company.

(3) Where, as at the registration under this Division of a Table A proprietary company, no articles prescribing regulations for the company have been signed under subsection (2), the company may, at any time after that registration, make such articles by special resolution.

(4) Articles shall be:

(a) printed;

(b) divided into numbered paragraphs; and

(c) unless made under subsection (3)—signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber).

(5) A witness to a signature to the articles of a subscriber to the memorandum shall attest the signature and add the address of the witness.

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(6) In the case of an unlimited company that has a share capital, the articles shall state the amount of share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount.

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Division 2—Registration of existing companies

126 Existing companies taken to be registered under this Division

(1) This section applies to each body corporate that was, immediately before the commencement of this Division, incorporated, or taken to be incorporated, under a previous law of this jurisdiction corresponding to this Chapter.

(2) At the commencement of this Division, the body corporate is taken to be registered as a company under this Division.

129 Effect of body corporate being taken to be registered under this Division

(1) This section applies to each body corporate (in this section called the ***company***) that is taken to be registered as a company under this Division.

(2) The Commission must, as soon as practicable after the commencement of this Division, allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part, Part 4.1 or a law corresponding to this Part or Part 4.1.

(2A) If:

(a) before the commencement of this Division, the Commission allotted to the company a number purporting to be a registration number; and

(b) as at that commencement, that number is distinct from each number that purports to be a registration number and that the Commission has allotted to a body corporate (other than the company);

the number referred to in paragraph (a) is taken to have been allotted to the company under subsection (2) at that commencement.

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(3) The company is taken to be registered as a company of whichever of the following classes:

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company;

(e) in the case of a mining company—a no liability company;

most nearly corresponds to the class in which the company was included under the corresponding previous law immediately before the commencement of this Division.

(4) The company is taken to be registered:

(a) if it was a proprietary company under the corresponding previous law—as a proprietary company; or

(b) in any other case—as a public company.

130 Constitution of Division 2 company

(1) This section applies to each body corporate that is taken to be registered as a company under this Division.

(2) The provisions that, at the time immediately before the commencement of this Division, formed part of the company's memorandum, and any provisions that were at that time taken by a law of this jurisdiction to form part of that memorandum, are taken to be, with such modifications as the circumstances require:

(a) if the company is so registered as a company limited by shares and as a proprietary company—the company's memorandum; or

(b) otherwise—the company's registered memorandum;

and shall bind the company and its members accordingly.

(3) The provisions that at that time formed part of the company's articles, and any provisions that were at that time taken by such a law to form part of those articles, are taken to be, with such modifications as the circumstances require:

(a) if paragraph (2)(a) applies—the company's articles; or

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(b) otherwise—the company's registered articles;

and shall bind the company and its members accordingly.

131 Application of Law in relation to Division 2 companies

(1) Subject to this Law, a provision of this Law that applies in relation to a company shall be taken to apply in relation to a Division 2 company in relation to:

(a) the doing of an act or thing, an act or thing done, or a matter arising, before the Division 2 company's registration day; or

(b) acts, things or matters including such an act, thing or matter, as the case may be;

unless:

(c) before that day, an act was done for the purposes of complying with a previous law corresponding to that provision; and

(d) the act would, if the Division 2 company had been a company, and this Law had been in operation, when the act was done, have constituted compliance with that provision as so applying.

(2) A provision applies as mentioned in subsection (1):

(a) as if a reference in the provision to a provision of this Law included a reference to a previous law corresponding to the last-mentioned provision; and

(b) with such other modifications as the circumstances require.

132 Acts preparatory to external administration of Division 2 company

(1) This section applies where, as at the beginning of a Division 2 company's registration day, an act or thing has been validly done by or in relation to the company under, or for the purposes of, a previous law corresponding to a provision of Chapter 5(other than Part 5.2).

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(2) On and after the registration day, this Law (other than this Division) applies in relation to the company, with such modifications as the circumstances require, as if:

(a) the company had been a company, and this Law had been in operation, at the time when that act or thing was so done; and

(b) that act or thing had been validly done at that time under or for the purposes of that provision of that Chapter.

(3) Nothing in this section makes a person guilty of a contravention of this Law in respect of an act or thing done, or an omission made, before the company's registration day.

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Division 3—Registering non-companies as companies

133 Non-company may apply for registration

(1) A non-company may lodge an application to be registered as a company under this Division.

(2) The Commission shall grant an application under this Division if, and only if:

(a) the Commission is satisfied that neither of sections 134 and 135 disentitles the applicant from being registered under this Division; and

(b) the application was made in accordance with section 136.

134 Externally-administered body corporate not to be registered

A non-company is not entitled to be registered under this Division if:

(a) it is an externally-administered body corporate; or

(b) an application has been made to a court (in Australia or elsewhere):

(i) to wind up the non-company; or

(ii) for the approval of a compromise or arrangement between the non-company and another person;

and has not been dealt with.

135 Prerequisites to eligibility

A non-company is not entitled to be registered under this Division unless:

(a) under the law of its place of origin:

(i) transfer of its incorporation is authorised;

(ii) it is of a class that is the same, or substantially the same, as one of the classes of companies referred to in subsection 137(3);

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(iii) if the liability of its members is limited—the extent to which, and the manner in which, that liability is limited is defined in its constitution; and

(iv) if it has a share capital and the liability of its members is limited—its capital is of a fixed amount and is divided into shares of a fixed amount;

(b) it has complied with the requirements (if any) of that law in relation to transfer of its incorporation;

(c) if that law does not require its members, or a specified proportion of them, to consent to transfer of its incorporation—transfer of its incorporation has been consented to by at least three-quarters of such of its members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at a meeting of which at least 21 days notice is given specifying the intention to apply for the transfer; and

(d) its name is reserved under section 374 in respect of it.

136 Form and content of application

(1) An application by a non-company under section 133 shall be in writing in the prescribed form and shall be accompanied by:

(a) a certified copy of a current certificate of its incorporation in its place of origin or a document of similar effect;

(b) evidence acceptable to the Commission that neither of sections 134 and 135 disentitles it from being registered under this Division;

(c) a certified printed copy of its constitution;

(d) if it is applying to be registered as a company having a share capital—a statement specifying:

(i) its nominal share capital and the number and classes into which the share capital is divided;

(ii) the number of shares taken up and the amount paid on each; and

(iii) subject to subsection (3), the full name, or the surname together with at least one given name and any other

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initials, and the address, of each shareholder and the number and class of shares held by each;

(e) unless it is a registered foreign company—in relation to each existing charge on its property that would be a registrable charge within the meaning of Part 3.5 if it were a company, the documents that subsection 263(3) requires to be lodged; and

(f) such other documents and information (if any) as are prescribed or as the Commission requires by written notice given to the non-company.

(2) Where a document is required by or under subsection (1) to be lodged and:

(a) the document has previously been lodged under Part 4.1 or a corresponding law; or

(b) the document has previously been lodged with a person under the foreign companies law of a jurisdiction and the Commission now has the document;

the Commission may dispense with the requirement.

(3) Subparagraph (1)(d)(iii) does not apply in relation to a non-company that has more than 500 members and satisfies the Commission that it will:

(a) keep its principal Australian register at a place within 25 kilometres of an office of the Commission; and

(b) provide reasonable accommodation and facilities for persons to inspect, and take copies of, its list of members and its particulars of shares transferred.

137 Registration of applicant as a company

(1) This section has effect where the Commission grants an application under this Division.

(2) The Commission shall register the applicant as a company by registering the application, and shall allot to the company a registration number distinct from the registration number of each

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body corporate (other than the company) already registered under this Part, Part 4.1 or a law corresponding to this Part or Part 4.1.

(3) The Commission shall register the applicant as a company of whichever of the following classes:
 (a) a company limited by shares;
 (b) a company limited by guarantee;
 (c) a company limited both by shares and by guarantee;
 (d) an unlimited company;
 (e) in the case of a mining company—a no liability company;

most nearly corresponds to the class in which the applicant is included under the law of its place of origin.

(4) The Commission shall register the applicant as a proprietary company if:
 (a) it has a share capital;
 (b) its constitution contains proprietary company provisions; and
 (c) it is not registered as a no liability company.

(5) Otherwise, the Commission shall register the applicant as a public company.

138 Registered body

Where a registered body becomes registered under this Division or a corresponding law, the Commission must remove the body's name from the register kept for the purposes of Division 1 or 2, as the case requires, of Part 4.1 and of each law corresponding to that Division, but may keep any or all of the documents that were lodged or registered under that Division and relate to the body.

139 Constitution of Division 3 company

(1) This section applies where a non-company is registered as a company under this Division.

(2) Such provisions of the non-company's constitution as this Law would, if the non-company had originally been incorporated under

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Division 1 on its registration day, have required its memorandum to include shall be deemed to be the company's registered memorandum and bind the company and its members accordingly.

(3) The other provisions of the constitution shall be deemed to be the company's registered articles and bind the company and its members accordingly.

(4) If the constitution, or a part of it, is in a language other than English, the translation of the constitution or part into English that was lodged with the application for registration shall, even if incorrect, be deemed for the purposes of subsections (2) and (3) to be the constitution or part, to the exclusion of the constitution or part itself.

140 Alterations of constitution

(1) A non-company that is registered under this Division as a company of a particular class shall, within 90 days after its registration day, make by special resolution such alterations (if any) of its constitution as:

- (a) are necessary to express in Australian currency any amounts of money specified in the constitution;
- (b) are necessary to ensure that the constitution complies with the requirements of this Law relating to the constitutions of Division 1 companies in that class; and
- (c) are necessary or expedient to give effect to, or are incidental to giving effect to, this Part.

(2) Where a company is required by virtue of paragraph (1)(a) to alter its constitution, the alterations shall all be made on the basis of a single rate fixed by a resolution of the company passed before the resolution making the alterations, and the resolution fixing the rate, when passed under this subsection, shall be deemed, for the purposes of section 256, to be a special resolution.

(3) A company that subsection (1) requires to alter its constitution shall, if the Commission so directs, apply to the Court, within a

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period specified by the Commission, for an order approving the constitution as altered under that subsection.

(4) On an application under subsection (3), the Court may, if satisfied that the resolution altering the company's constitution has been duly passed and that the alterations comply with subsection (1), make an order approving the constitution as altered under subsection (1), or approving it with specified modifications.

(5) Subject to subsection (6), section 171 applies in relation to a resolution under subsection (1), or an order under subsection (4), of this section, as if a reference in subsection 171(2), (3), (5) or (9) to the memorandum of a company were a reference to the altered constitution.

(6) Where, but for this subsection, subsection (5) and section 171 would require a company to lodge a printed copy of its constitution as altered by a resolution under subsection (1), or an order under subsection (4), of this section, the company may instead lodge a copy of the resolution or an office copy of the order, as the case may be, and, if its memorandum has been altered by the resolution or order, a printed copy of the memorandum as so altered.

(7) As from the time when alterations under this section of the constitution of a company having a share capital take effect:

(a) the amount of the nominal share capital, and the nominal value of each share, shall be taken to be the amount and value respectively specified in the altered constitution;

(b) a person who, immediately before that time, held shares in the company in a particular class holds the same number of shares in that class as immediately before that time; and

(c) the amount paid up on a share in the company shall be deemed to be an amount in Australian currency that bears to the nominal value of the share under the altered constitution the same proportion as, immediately before that time, the amount paid up on the share bore to the share's nominal value, and the amount of the share capital paid up shall be calculated accordingly.

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141 Share warrants

(1) The bearer of a share warrant issued by a Division 3 company before its registration day is entitled, on surrendering the share warrant to the company for cancellation, to have the bearer's name entered as a member in the company's register of members.

(2) A Division 3 company is liable to compensate a person for any loss incurred by the person because of the company entering in its register of members the name of the bearer of a share warrant issued by the company, before its registration day, in respect of shares specified in the share warrant, without the share warrant being surrendered and cancelled.

(3) Subject to this section, the articles of a Division 3 company may provide that the bearer of a share warrant in relation to shares in the company is to be deemed to be a member of the company for all purposes or for specified purposes.

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Division 4—Registering recognised companies as companies

142 Recognised company may apply for registration

(1) A recognised company may lodge an application to be registered as a company under this Division.

(2) The Commission must grant an application under this Division if, and only if:

(a) the Commission is satisfied that section 143 does not disentitle the applicant from being registered under this Division; and

(b) the application was made in accordance with section 144.

143 Externally-administered body corporate not to be registered

A recognised company is not entitled to be registered under this Division if:

(a) it is an externally-administered body corporate; or

(b) an application has been made to a court (in Australia or elsewhere):

(i) to wind up the recognised company; or

(ii) for the approval of a compromise or arrangement between the recognised company and another person;

and has not been dealt with.

144 Form and content of application

(1) An application by a recognised company under section 142 must be in writing in the prescribed form and must be accompanied by:

(a) a certificate issued to the recognised company, not earlier than one month before the date when the application is lodged, under the provisions of the Corporations Law of the recognised company's place of origin that correspond to Division 4A; and

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(b) evidence acceptable to the Commission that section 143 does not disentitle it from being registered under this Division; and

(c) such other documents and information (if any) as are prescribed or as the Commission requires by written notice given to the recognised company.

(2) Where:

(a) a document is required by or under subsection (1) to be lodged; and

(b) the document has previously been lodged with the NCSC or the Commission; and

(c) the Commission now has the document;

the Commission may dispense with the requirement.

145 Registration of applicant as a company

(1) This section has effect where the Commission grants an application under this Division.

(2) The Commission must register the applicant as a company by registering the application and must allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part, Part 4.1 or a law corresponding to this Part or Part 4.1.

(3) The Commission must register the applicant as a company of whichever of the following classes:

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company;

(e) in the case of a mining company—a no liability company;

corresponds to the class in which the applicant is included under the law of its place of origin.

(4) The Commission must register the applicant:

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(a) if the applicant was registered as a proprietary company in its place of origin—as a proprietary company; or

(b) if the applicant was registered as a public company in its place of origin—as a public company.

146 Constitution of Division 4 company

(1) This section applies where a recognised company is registered as a company under this Division.

(2) Such provisions of the recognised company's constitution as this Law would, if the recognised company had originally been incorporated under Division 1 on its registration day, have required its memorandum to include are taken to be the company's registered memorandum and bind the company and its members accordingly.

(3) The other provisions of the constitution are taken to be the company's registered articles and bind the company and its members accordingly.

(4) Where any of the documents making up a recognised company's constitution is or are in a language other than English:

(a) a reference in this section to the constitution is a reference to the translation of the document or documents concerned into the English language that was lodged with the application for registration under this Division, irrespective of the correctness of the translation; but

(b) nothing in this subsection affects any liability of the recognised company or its members existing immediately before the registration of the recognised company under this Division.

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Division 4A—Transfer of company's incorporation to another jurisdiction

147 Certificate authorising application for transfer of incorporation

(1) A company may apply to the Commission for a certificate authorising it to apply for registration as a company under the Corporations Law of another jurisdiction.

(2) An application under subsection (1) must be in the prescribed form and must be accompanied by:

(a) a declaration in writing signed by the directors of the company or, if the company has more than 2 directors, a majority of the directors, to the effect that they have made an inquiry into the affairs of the company and that at a meeting of directors have formed an opinion that the company will be able to pay its debts as they fall due; and

(b) a report in the prescribed form as to affairs of the company, made up to the latest practicable date before the making of the application, showing the assets and liabilities of the company.

(3) On application under subsection (1), the Commission must issue a certificate if and only if:

(a) the company has passed a special resolution approving the application for the certificate; and

(b) the company has given to its creditors, in a manner approved by the Commission, notice of its intention to apply for such a certificate; and

(c) the Commission is not aware of any failure of the company to comply with any applicable requirement of this Law; and

(d) the Commission is not aware of any other reason why the certificate should not be granted; and

(e) both the Minister, and the Minister for this jurisdiction, have consented to the issuing of the certificate.

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(4) A certificate may be issued under subsection (3) subject to such conditions as are specified in the certificate.

(5) With such modifications as are necessary, subsections 172(6) to (10) (inclusive) and section 173 apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to an application for a certificate under this section as if it were a special resolution under section 172.

147A Effect of registration of company under Corporations Law of another jurisdiction

Where, under the provisions of the Corporations Law of another jurisdiction that correspond to Division 4, the Commission registers a company as a company under that Corporations Law, the company ceases to be incorporated under this Law from the time at which it is taken, under the provision of that Corporations Law that corresponds to section 150, to be a company duly incorporated under that Corporations Law.

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Division 5—Companies registered under Division 2, 3 or 4

148 Certificate of registration

(1) On registering a body corporate as a company under Division 3 or 4, the Commission shall prepare a certificate under its common seal that complies with this section and shall issue the certificate to the body.

(2) The certificate shall state that the body:

(a) is registered as a company under that Division of the Corporations Law of this jurisdiction; and

(b) because of that registration, is an incorporated company;

and shall specify the day of commencement of the registration.

(3) The certificate shall state that the body is:

(a) a company limited by shares;

(b) a company limited by guarantee;

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

(d) an unlimited company; or

(e) a no liability company;

as the case requires.

(4) The certificate shall state that the body is a proprietary company or a public company, as the case requires.

(5) The Commission shall keep a copy of a certificate issued under this section, and subsections 1274(2) and (5) apply in relation to that copy as if it were a document lodged with the Commission.

149 Effect of certificate

A certificate under the Commission's common seal stating that a specified body corporate has been registered as a Division 3 company or Division 4 company is conclusive evidence that:

(a) all requirements of this Law in respect of:

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(i) registration of the body under that Division; and

(ii) matters preceding or incidental to the registration; have been complied with;

(b) the body is duly registered as a company under that Division; and

(c) the day of commencement of the registration is the day (if any) specified as such in the certificate.

149A Effect of certificate issued under previous law

A certificate purporting to be issued, under a corresponding previous law, by the authority responsible for administering that law stating that a specified body corporate has been registered as a company under that or another corresponding previous law is conclusive evidence:

(a) that:

(i) all the requirements of the law concerned in respect of registration of the body corporate under that law; and

(ii) all matters precedent and incidental to the registration of the body corporate under that law;

have been complied with; and

(b) that the body corporate referred to in the certificate was duly registered as a company under that law and was taken to be a company duly incorporated under that law.

150 Effect of registration under Division 2 or 3

(1) Where a body corporate is registered or taken to be registered under Division 2, 3 or 4, this section has effect during the period beginning at the start of the body's registration day and ending when the body ceases to be registered under that Division.

(2) The body continues in existence, as a body corporate.

(3) The body is taken to be a company duly incorporated under this Law.

(6) The body:

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(a) is capable of performing all the functions of a body corporate;
(b) is capable of suing and being sued;
(c) has perpetual succession;
(d) shall have a common seal; and
(e) has power to acquire, hold and dispose of property.

(7) The body's members have such liability to contribute to the body's property if the body is wound up under this Law as is provided for by this Law as it applies in relation to the body by virtue of this Division.

(8) Nothing in this section:
(a) creates a new legal entity;
(b) prejudices or affects the body's identity or its continuity as a body corporate; or
(c) changes the body's membership.

(9) Nothing in this section affects any act or thing done (including, for example, an appointment made or a resolution passed) before the body's registration day under a power conferred by:
(a) the body's constitution; or
(b) a law under which the body was incorporated or registered before that day.

(10) Nothing in this section or in subsection 139(4):
(a) affects the body's property; or
(b) affects, except as provided by this Part (other than this section and that subsection), any rights, privileges, powers, authorities, duties, functions, liabilities (including liabilities in respect of offences) or obligations of the body, or of any other person, existing immediately before the body's registration day.

(11) Nothing in this section:
(a) renders defective any legal proceedings; or

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(b) prevents legal proceedings from being begun or continued by or against the body.

151 Application of Act to Division 2 or 3 company

(1) Subsection 175(1) does not apply in relation to a Division 2 or 3 company unless its members, by special resolution, resolve that the subsection should apply to the company.

(2) Section 244 does not apply in relation to a Division 2, 3 or 4 company.

(3) Section 245 applies in relation to a Division 2, 3 or 4 company as if:

(a) subsection 245(2) were omitted; and

(b) there were omitted from paragraph 245(5)(a) "or the period of 18 months referred to in subsection (2)".

(4) Section 290 applies in relation to a Division 2 or 3 company in relation to the bodies corporate that were its subsidiaries at the start of its registration day and, despite subsection 290(2), subsection 290(1) shall be complied with in relation to those bodies corporate within 12 months after that day.

(5) Division 2 of Part 5.6 applies in relation to a Division 3 or 4 company as if a reference in that Division to a past member of the company included a reference to a person who had been a member of the company but had ceased to be such a member before the company's registration day, but such a person is liable to contribute to the company's property only to an amount sufficient for:

(a) payment of debts and liabilities contracted by the company before that day;

(b) payment of the costs, charges and expenses of winding up the company, in so far as those costs, charges and expenses relate to the debts and liabilities referred to in paragraph (a); and

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(c) the adjustment of the rights of the contributories among themselves, in so far as the adjustment relates to the debts and liabilities referred to in paragraph (a).

(6) The regulations may make modifications of this Act (other than this Part) as it applies in relation to a Division 3 or 4 company.

152 Establishment of registers and minute books

(1) Within 14 days after its registration day, a Division 2, 3 or 4 company shall:

(a) establish the registers that sections 209, 215, 235, 242, 271, 715, 724, 1047 and 1070 require to be kept;

(b) include in those registers such of the information that this Law requires to be included in those registers as is available to the company at that day;

(c) establish books to be used for the entry of minutes of proceedings of meetings for the purpose of compliance with section 258; and

(d) comply with subsection 259(1) in relation to those books.

(2) A Division 2 company that, immediately before its registration day:

(a) kept a register in accordance with a previous law corresponding to a provision referred to in paragraph (1)(a); or

(b) kept books for the purpose of complying with a previous law corresponding to section 258;

shall be deemed to have complied with paragraph (1)(a) or (c) in relation to that register or those books, as the case may be.

(3) Without limiting the generality of paragraph (1)(b), a Division 2 company that, immediately before its registration day:

(a) kept a register as mentioned in paragraph (2)(a); and

(b) was required by a previous law corresponding to a provision of this Law to include particular information in that register;

shall so include the information within 14 days after that day.

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(3A) A Division 4 company that, immediately before its registration day:

(a) kept a register in accordance with a law corresponding to a provision referred to in paragraph (1)(a); or

(b) kept books for the purpose of complying with a law corresponding to section 258;

is taken to have complied with paragraph (1)(a) or (c) in relation to that register or those books, as the case may be.

(3B) Without limiting the generality of paragraph (1)(b), a Division 4 company that, immediately before its registration day:

(a) kept a register as mentioned in paragraph (3A)(a); and

(b) was required by a law corresponding to a provision of this Law to include particular information in that register;

must so include the information within 14 days after that day.

(4) Where, before the end of the period of 14 days referred to in subsection (1):

(a) under subsection 210(3), 215(5), 235(8), 242(6), 271(4), 715(3), 724(4), 1047(5) or 1070(2), a person requests a Division 2, 3 or 4 company to give to the person, or to make available for inspection by the person, a copy of, or of a part of, a register kept under this Law; or

(b) under subsection 259(2), a person requests a Division 2, 3 or 4 company to give to the person a copy of minutes of a general meeting;

the period within which the company is required to comply with the request shall be deemed to begin at the end of that period of 14 days.

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Part 2.3—Legal capacity, powers and status

Division 1—Legal capacity and powers

159 Interpretation

In sections 160, 161 and 162:

(a) a reference to the doing of an act by a company includes a reference to the making of an agreement by the company and a reference to a transfer of property to or by the company; and

(b) a reference to legal capacity includes a reference to powers.

160 Object of sections 161 and 162

The object of sections 161 and 162 is:

(a) to abolish the doctrine of *ultra vires* in its application to companies; and

(b) without affecting the validity of a company's dealings with outsiders, to ensure that the company's officers and members give effect to provisions of the company's constitution relating to objects or powers of the company;

and those sections shall be construed, and have effect, accordingly.

161 Legal capacity

(1) A company has, both within and outside this jurisdiction, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside this jurisdiction, power:

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

(b) to issue debentures of the company;

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

(d) to give security by charging uncalled capital;

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

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

(g) to do any other act that it is authorised to do by any other law (including a law of a foreign country).

(2) Subsection (1) has effect in relation to a company:

(a) subject to this Law (other than subsection 162(1));

(b) in a case where the company's constitution contains an express or implied restriction on, or an express or implied prohibition of, the exercise by the company of any of its powers—despite any such restriction or prohibition;

(c) in a case where the memorandum of the company contains a provision stating the objects of the company—despite that fact; and

(d) despite subsection 162(1).

(3) The fact that the doing of an act by a company would not be, or is not, in its best interests does not affect its legal capacity to do the act.

162 Restrictions on companies

(1) A company's constitution may contain an express restriction on, or an express prohibition of, the exercise by the company of a power of the company.

(2) Where:

(a) a company exercises a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the company's constitution; or

(b) the memorandum of a company contains a provision stating the objects of the company and the company does an act otherwise than in pursuance of those objects;

the company contravenes this subsection.

(3) An officer of a company who is involved in a contravention by the company of subsection (2) contravenes this subsection.

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(4) A person who contravenes subsection (2) or (3) is not guilty of an offence.

(5) Where, by exercising a power as mentioned in paragraph (2)(a), or by doing an act as mentioned in paragraph (2)(b), a company contravenes subsection (2), the exercise of the power, or the act, as the case may be, is not invalid merely because of the contravention.

(6) An act of an officer of a company is not invalid merely because, by doing the act, the officer contravenes subsection (3).

(7) The fact that:

(a) by exercising a power as mentioned in paragraph (2)(a), or by doing an act as mentioned in paragraph (2)(b), a company contravened, or would contravene, subsection (2); or

(b) by doing a particular act, an officer of a company contravened, or would contravene, subsection (3);

may be asserted or relied on only in:

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

(d) an application for an order under section 230;

(e) an application for an order under section 260;

(f) an application for an injunction under section 1324 to restrain the company from entering into an agreement;

(g) proceedings (other than an application for an injunction) by the company, or by a member of the company, against the present or former officers of the company; or

(h) an application by the Commission or by a member of the company for the winding up of the company.

(8) Where, if subsection (7) had not been enacted, the Court would have power under section 1324 to grant, on the application of a person, an injunction restraining a company, or an officer of a company, from engaging in particular conduct constituting a contravention of subsection (2) or (3), as the case may be, the Court may, on the application of that person, order the first-mentioned company, or the officer, as the case may be, to pay damages to that person or any other person.

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164 Persons having dealings with companies etc

(1) A person having dealings with a company is, subject to subsection (4), entitled to make, in relation to those dealings, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the company that the matters that the person is so entitled to assume were not correct shall be disregarded.

(2) A person having dealings with a person who has acquired or purports to have acquired title to property from a company (whether directly or indirectly) is, subject to subsection (5), entitled to make, in relation to the acquisition or purported acquisition of title from the company, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the company or by the second-mentioned person that the matters that the first-mentioned person is so entitled to assume were not correct shall be disregarded.

(3) The assumptions that a person is, by virtue of subsection (1) or (2), entitled to make in relation to dealings with a company, or in relation to an acquisition or purported acquisition from a company of title to property, as the case may be, are:

(a) that, at all relevant times, the company's constitution has been complied with;

(b) that a person who appears, from returns lodged under section 242 or 335 or with a person under a previous law corresponding to section 242 or 335, to be a director, the principal executive officer or a secretary 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, by the principal executive officer or by a secretary, as the case may be, of a company carrying on a business of the kind carried on by the company;

(c) that a person who is held out by the company to be an officer or agent of the company has been duly appointed and has authority to exercise the powers and perform the duties

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customarily exercised or performed by an officer of the kind concerned;

(d) that an officer or agent of the company who has authority to issue a document on behalf of the company has authority to warrant that the document is genuine and that an officer or agent of the company who has authority to issue a certified copy of a document on behalf of the company has authority to warrant that the copy is a true copy;

(e) that a document has been duly sealed by the company if:

(i) it bears what appears to be an impression of the seal of the company; and

(ii) the sealing of the document appears to be attested by 2 persons, being persons one of whom, by virtue of paragraph (b) or (c), may be assumed to be a director of the company and the other of whom, by virtue of paragraph (b) or (c), may be assumed to be a director or to be a secretary of the company; and

(f) that the directors, the principal executive officer, the secretaries, the employees and the agents of the company properly perform their duties to the company.

(4) Despite subsection (1), a person is not entitled to make an assumption referred to in subsection (3) in relation to dealings with a company if:

(a) the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or

(b) the person's connection or relationship with the company is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct;

and where, by virtue of this subsection, a person is not entitled to make a particular assumption in relation to dealings with a company, subsection (1) has no effect in relation to any assertion by the company in relation to the assumption.

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(5) Despite subsection (2), a person is not entitled to make an assumption referred to in subsection (3) in relation to an acquisition or purported acquisition from a company of title to property if:

(a) the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or

(b) the person's connection or relationship with the company is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct;

and where, by virtue of this subsection, a person is not entitled to make a particular assumption in relation to dealings with a company, subsection (2) has no effect in relation to any assertion by the company or by any other person in relation to the assumption.

165 Lodgment of documents etc not to constitute constructive notice

(1) Subject to subsection (2), a person shall not be taken to have knowledge of:

(a) a company's memorandum or articles or any of the contents of a company's memorandum or articles;

(b) a document or the contents of a document; or

(c) any particulars;

merely because of either or both of the following:

(d) the memorandum, the articles, the document or the particulars has or have been lodged with the Commission, or lodged with a person under a previous law corresponding to a provision of this Law;

(e) the memorandum, the articles, the document or the particulars is or are referred to in any other document that has been lodged with the Commission, or lodged with a person under a previous law corresponding to a provision of this Law.

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(2) Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged under Division 2 of Part 3.5, or with a person under a previous law corresponding to that Division, to the extent that the document relates to a charge that is registrable under that Division or law.

166 Effect of fraud

Section 164 operates:

(a) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to dealings with a company; or

(b) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to an acquisition or purported acquisition (whether direct or indirect) of title to property from a company;

even if a person referred to in paragraph 164(3)(b), (c) or (e) or an officer, agent or employee of the company referred to in paragraph 164(3)(d) or (f):

(c) has acted or is acting fraudulently in relation to the dealings, or in relation to the acquisition or purported acquisition of title to property from the company, as the case may be; or

(d) has forged a document that appears to have been sealed on behalf of the company;

unless the person referred to in paragraph (a) or (b) of this section has actual knowledge that the person referred to in paragraph 164(3)(b), (c) or (e), or the officer, agent or employee of the company referred to in paragraph 164(3)(d) or (f), has acted or is acting fraudulently, or has forged a document, as mentioned in paragraph (c) or (d) of this section.

166A Recognition of companies from other jurisdictions

(1) A recognised company has in this jurisdiction the same legal personality, capacity, powers and status as if it were a company.

(2) Without limiting the generality of subsection (1), a recognised company has power to hold land in this jurisdiction.

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(3) Subsection (1) does not impose on a recognised company an obligation that it would not have if that subsection had not been enacted.

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Division 2—Changes of status

167 Change of status

(1) Subject to this section:

(a) an unlimited company may convert to a limited company if:

(i) in any case—it was not, within the previous 3 years, a limited company that became an unlimited company under paragraph (e); and

(ii) in the case of a Division 2 company—it was not, within the previous 3 years, a limited company within the meaning of a previous law corresponding to paragraph (e) that became under that law an unlimited company within the meaning of that law;

(b) a no liability company all the issued shares in which are fully paid up may convert to a company limited by shares;

(c) a company limited by shares may convert to a company limited both by shares and by guarantee;

(d) a company limited by guarantee may convert to a company limited both by shares and by guarantee; and

(e) a limited company may convert to an unlimited company.

(2) Where a company lodges a written application for a change of status as provided by subsection (1) and, subject to subsections 173(1), (2) and (3) as applied by subsection (7) of this section, lodges with the application the necessary documents, the Commission shall issue to the company a certificate of registration:

(a) appropriate to the change of status applied for; and

(b) specifying, in addition to the particulars prescribed in respect of a certificate of registration of a company of that status, that the certificate is issued under this section;

and, on the issue of such a certificate, the company is a company having the status specified in the certificate.

(3) In subsections (2) and (5), ***necessary documents***, in relation to an application under that subsection, means:

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(a) a printed copy of a special resolution of the company:
 (i) resolving to change the status of the company and specifying the status sought;
 (ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Law relating to the memorandum of a Division 1 company of the status sought;
 (iii) if the company has articles otherwise than by virtue of subsection 175(2)—making such alterations and additions (if any) to the articles as are necessary to bring the articles into conformity with the requirements of this Law relating to the articles of a Division 1 company of the status sought;
 (iv) otherwise—adopting such articles (if any) as are required by this Law to be registered in respect of a Division 1 company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status; and
 (v) changing the name of the company to a name by which it could be registered as a Division 1 company of the status sought;

(b) if, by a special resolution of a kind referred to in paragraph (a), the memorandum of the company is altered or the articles of the company are altered or added to, or articles are adopted by the company—a printed copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be;

(c) if the application is by a Table A proprietary company and:
 (i) the articles of the company are neither altered nor added to; and
 (ii) no articles are adopted;

by a special resolution of a kind referred to in paragraph (a)—a printed copy of the company's articles; and

(d) in the case of an application by a limited company to convert to an unlimited company:

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(i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and

(ii) a statement in writing by a director or secretary of the company verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form in person, that the director or secretary making the statement has taken all reasonable steps to satisfy himself or herself that each person who subscribed the form was lawfully empowered so to do.

(4) Where the status of a company is changed under to this section, notice of the change of status shall be published by the company in such manner (if any) as the Commission directs.

(5) The provisions of subsections 171(2) to (10), inclusive, do not apply in relation to an application under this section or in relation to necessary documents in relation to such an application.

(6) A special resolution passed for the purposes of an application under this section takes effect only on the issue under this section of a certificate of registration of the company to which the resolution relates.

(7) With such modifications as are necessary, subsections 172(6) to (10), inclusive, and section 173 apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under section 172.

(8) A change in the status of a company under this section does not operate:

(a) to create a new legal entity;

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

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

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

and any legal proceedings that could have been continued or commenced by or against the company before the change in its status may, notwithstanding the change in its status, be continued or commenced by or against it after the change in its status.

168 Change from public to proprietary company or vice versa

(1) A public company having a share capital (other than a no liability company) may convert to a proprietary company by lodging a copy of a special resolution:

(a) determining to convert to a proprietary company and specifying an appropriate alteration to its name; and

(b) altering its constitution so far as is necessary to ensure that the constitution includes proprietary company provisions.

(2) A proprietary company may, subject to its constitution, convert to a public company by lodging:

(a) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name; and

(b) in the case of a Table A proprietary company—a copy of its memorandum and of its articles (if any);

and thereupon the proprietary company provisions included, or deemed to be included, in its constitution, cease to form part of its constitution.

(3) On compliance by a company with subsection (1) or (2) and on the issue of a certificate of registration of the company altered accordingly, the company is a proprietary company or a public company, as the case requires.

(4) With such modifications as are necessary, subsections 172(6) to (10), inclusive, and section 173 apply in respect of the proposal, passing and lodging, and the cancellation or confirmation by the

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Court, of a special resolution relating to the conversion of a company under subsection (1) or (2) of this section as if it were a special resolution under section 172.

(5) A conversion of a company under subsection (1) or (2) does not operate:

(a) to create a new legal entity;

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

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

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

and any legal proceedings that could have been continued or commenced by or against the company before the conversion may, despite the conversion, be continued or commenced by or against it after the conversion.

169 Registration of Table A proprietary company's constitution after change of status

Where a Table A proprietary company changes its status under section 167 or 168, the Commission shall register the memorandum, and the articles, of the company that were lodged under that section.

170 Default in complying with requirements as to proprietary companies

(1) Where, on application by the Commission with respect to a proprietary company or by a member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph 116(c) or (d) that is included, or is deemed to be included, in the company's constitution, the Court may, by order, determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.

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(2) Where:

(a) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in paragraph 116(b) that is included, or is deemed to be included, in the company's constitution;

(b) a proprietary company has been convicted of an offence under subsection (7) of this section;

(c) a proprietary company purports to alter its constitution in such a way that the constitution would no longer include proprietary company provisions; or

(d) a proprietary company has ceased to have a share capital;

the Commission may, by notice in writing served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

(3) Where, under this section, the Court or the Commission determines that a company has ceased to be a proprietary company:

(a) the company is a public company and shall be deemed to have been a public company on and from the date specified in the order or notice;

(b) the company shall, on the date so specified, be deemed to have changed its name by the omission from the name of the word "Proprietary" or the abbreviation "Pty.", as the case requires; and

(c) if an order has been made under subsection (1)—the company shall, within 14 days after the date of the order, lodge an office copy of the order.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (1) or (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and reasonable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a proprietary company.

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(5) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a proprietary company without the leave of the Court.

(6) Where a subscription for shares in or debentures of, or a deposit of money with, a proprietary company is arranged by or through a solicitor, broker, agent or any other person (whether an officer of the company or not) who invites the public to make use of his, her or its services in arranging investments or holds himself, herself or itself out to the public as being in a position to arrange investments, the company and any person, including any officer of the company, who is a party to the arrangement each contravene this subsection.

(7) Where default is made in relation to a proprietary company in complying with any of the proprietary company provisions that are included, or deemed to be included, in the company's constitution, the company contravenes this subsection.

(8) An act or transaction is not invalid merely because of contravention of either or both of subsections (6) and (7).

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Division 3—Memorandum and articles

171 General provisions as to alteration of memorandum

(1) The memorandum of a company may be altered to the extent, and in the manner, provided by this Law but not otherwise.

(2) Subject to any other provision of this Law requiring a resolution of a company, an order of the Court, or any other document, affecting the memorandum of a company to be lodged, the company shall, within 14 days after the passing of any such resolution, the making of any such order or the execution of any such document, lodge a copy of the resolution, an office copy of the order or a copy of the document, as the case may be.

(3) Subsection (2) does not apply in relation to a Table A proprietary company in relation to a resolution, order or document unless it affects the company's memorandum in relation to the company's name, share capital, or status as a proprietary company.

(4) On being required by the Commission to do so, a Table A proprietary company shall lodge a printed copy of its memorandum, even if the memorandum has not been altered.

(5) Where an alteration or alterations in the memorandum of a company has or have been made, the company shall, on being required by the Commission to do so, lodge a printed copy of the memorandum as altered by the alteration or alterations.

(6) In subsection (5):

alteration, in relation to a company's memorandum, includes, in the case of a Division 2 or 3 company, an alteration made before the company's registration day.

(7) The Commission shall register a resolution, order or other document lodged under this Law that affects the memorandum of a company.

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(8) Subject to this Law, where a resolution of a company, an order of the Court, or any other document, affects a company's memorandum, the alteration of the memorandum to which the resolution, order or document relates shall take effect:

(a) if this Law requires the resolution, order or document to be lodged—on, and not before, the resolution, order or document is registered under subsection (7); or

(b) otherwise—on the day on which the resolution is passed, the order is made or the document is executed, as the case may be, or on such later day as the resolution, order or document specifies.

(9) Where a resolution, order or other document has been registered by the Commission under subsection (7), the Commission shall:

(a) in the case of an order—certify the registration of the order; and

(b) in the case of a resolution or other document—if so requested by the company, certify the registration of the resolution or document.

(10) A certificate of the Commission as to the registration of an order is conclusive evidence that all the requirements of this Law with respect to the alteration to which the order relates and any confirmation of that alteration have been complied with.

(11) Notice of the registration shall be published in such manner (if any) as the Court or the Commission directs.

(12) The Commission shall, where appropriate, issue a certificate of registration of the company in accordance with the alteration made to the memorandum.

(13) The Commission shall keep a copy of a certificate issued under subsection (12), and subsections 1274(2) and (5) apply to that copy as if it were a document lodged with the Commission.

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172 Alterations of memorandum

(1) Subject to this section, a company may, by special resolution, alter the memorandum of the company:

(a) if the memorandum contains a provision stating the objects of the company—by altering or omitting that provision;

(b) if the memorandum does not contain a provision stating the objects of the company—by inserting in the memorandum a provision stating the objects of the company; or

(c) in any case—by altering, omitting or inserting any other provision with respect to the objects of the company or any provision with respect to the powers of the company.

(2) Subject to this section, subsection 180(3) and section 260, if a provision of the memorandum of a company could lawfully have been contained in the articles of the company, the company may, by special resolution, alter the memorandum:

(a) unless the memorandum prohibits the alteration of that provision—by altering that provision; or

(b) unless the memorandum prohibits the omission of that provision—by omitting that provision.

(3) The memorandum of a company may provide that a special resolution altering, adding to or omitting a provision contained in the memorandum, being a provision that could lawfully have been contained in the articles of the company, does not have any effect unless and until a further requirement specified in the memorandum has been complied with.

(4) Without limiting the generality of subsection (3), the further requirement referred to in that subsection may be a requirement:

(a) that the relevant special resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) that the consent or approval of a particular person be obtained; or

(c) that a particular condition be fulfilled.

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(5) Nothing in subsection (2) permits the alteration or omission of a provision of the memorandum of a company that relates to rights to which only members in a particular class of members are entitled.

(6) Notice of a general meeting specifying the intention to propose, as a special resolution, a resolution for the alteration of the memorandum of a company, being an alteration provided for by subsection (1), shall be given:
   (a) to all members;
   (b) to all trustees for debenture holders; and
   (c) if there are no trustees for, or for a particular class of, debenture holders—to all debenture holders, or all debenture holders in that class, as the case may be, whose names are, at the time of the posting of the notice, known to the company.

(7) The Court may, in the case of any person or class of persons, for such reasons as seem sufficient to the Court, dispense with the notice referred to in subsection (6).

(8) If an application for the cancellation of an alteration of the memorandum of a company is made to the Court in accordance with this section by:
   (a) in the case of an alteration provided for by subsection (1)—the holders of not less than 10% in nominal value of the company's debentures; or
   (b) in any case—the holders of not less, in the aggregate, than 10% in nominal value of the company's issued share capital or any class of that capital or, if the company is not limited by shares, not less than 10% of the company's members;

   the alteration does not have any effect except so far as it is confirmed by the Court.

(9) The application shall be made within 21 days after the date on which the resolution altering the memorandum of the company was passed, and may be made, on behalf of the persons entitled to make the application, by such one or more of their number as they appoint in writing for the purpose.

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(10) On the application, the Court shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors and may do any or all of the following:
- (a) adjourn the proceedings so that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or a subsidiary of the company) of the interests of dissentient members;
- (b) give directions and make orders for facilitating or carrying into effect any such arrangement;
- (c) make an order cancelling the alteration or confirming the alteration either wholly or in part and on specified terms and conditions.

(11) A reference in this section to a provision of the memorandum of a company that could lawfully have been contained in the articles of the company is, in the case of a memorandum of a Division 2 or 3 company, a reference to a provision of the memorandum of the company that could lawfully have been contained in the articles of the company if the memorandum and articles of the company had originally been registered under this Law.

173 Lodging, and taking effect, of resolutions passed under section 172

(1) Where a resolution altering a company's memorandum as provided by subsection 172(1) or (2) is passed, this section has effect despite any other provision of this Law.

(2) If this Law requires a copy of the resolution to be lodged, the company shall:
- (a) if no application is made to the Court in accordance with section 172—lodge such a copy within 14 days after the end of the period of 21 days after the day on which the resolution is passed; or
- (b) otherwise—lodge such a copy, together with an office copy of the order of the Court, within 14 days after:
  - (i) the end of that period of 21 days; or

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(ii) the Court determines the application;

whichever happens later.

(3) Otherwise, the resolution shall not take effect before the end of 21 days after the day on which the resolution is passed.

174 Effect of memorandums of certain Division 2 companies

(1) In this section:

entrenchable provision, in relation to the memorandum of a body corporate, means a provision of the memorandum that could lawfully have been contained in the body's articles;

translation day, in relation to a company, means the prescribed day.

(2) Where, throughout the period beginning immediately before a Division 2 company's translation day and ending immediately before its registration day, the company's memorandum:

(a) prohibited the alteration of an entrenchable provision; or

(b) provided as mentioned in a previous law corresponding to subsection 172(3) in respect of a special resolution altering or adding to an entrenchable provision;

then, so long as it continues so to prohibit, or so to provide, the company's memorandum is taken:

(c) also to prohibit the omission of the entrenchable provision; or

(d) also to provide to the same effect in respect of a special resolution omitting the entrenchable provision;

as the case may be.

(3) Subsection (2) has effect in relation to a memorandum except so far as the memorandum expressly provides to the contrary.

175 Articles adopting Table A or B

(1) Articles may:

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(a) in the case of a company other than a no liability company—adopt all or any of the regulations contained in Table A; or

(b) in the case of a no liability company—adopt all or any of the regulations contained in Table B.

(2) Where a Division 1 company is a company limited by shares, the regulations contained in Table A, except in so far as they are excluded or modified by articles of the company that are registered, or signed or made, as the case requires, under section 125, shall be, so far as applicable, the company's articles in the same manner, and to the same extent, as if they were contained in registered articles.

(3) Except in so far as the regulations contained in Table A are excluded or modified by, or are otherwise inconsistent with, provisions that are proved for the purposes of a proceeding in an Australian court to be included (otherwise than by virtue of subsection (2)) at a particular time in the articles of a Table A proprietary company, those regulations shall be deemed for the purposes of that proceeding to have been included in the company's articles at that time.

(4) In the case of a Division 1 company that is a no liability company, if articles are not registered, or if articles are registered then in so far as they do not exclude or modify the regulations contained in Table B, those regulations shall, so far as applicable, be the articles of the company in the same manner, and to the same extent, as if they were contained in registered articles.

176 Alteration of articles

(1) Subject to this Law, a company may by special resolution alter or add to its articles.

(2) The memorandum of a company may provide that a special resolution altering or adding to the articles of the company does not have any effect unless and until a further requirement specified in the memorandum has been complied with.

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(3) Without limiting the generality of subsection (2), the further requirement referred to in that subsection may be a requirement:
   (a) that the relevant special resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;
   (b) that the consent or approval of a particular person be obtained; or
   (c) that a particular condition be fulfilled.

(4) Subject to this Law, an alteration or addition so made in the articles is, on and from the date of the special resolution or such later date as is specified in the resolution, as valid as if originally contained in the articles and is subject in like manner to alteration by special resolution.

(5) Subject to this section, a company has the power, and shall be deemed always to have had the power, to amend its articles:
   (a) unless it is a no liability company—by the adoption of all or any of the regulations contained in Table A; or
   (b) if it is a no liability company—by the adoption of all or any of the regulations contained in Table B;

by reference only to the regulations in the Table or to the numbers of particular regulations contained in the Table, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

177 Deemed proprietary company provisions

(1) Where, but for this section, a proprietary company's constitution would not include proprietary company provisions, the company's articles shall be deemed to include:
   (a) if no provision of the constitution restricts the right to transfer shares in the company—a provision prohibiting the transfer of such shares except to a person approved by the directors; and

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(b) in any case—such other restrictions, limitations and prohibitions as are necessary for the articles to include proprietary company provisions.

(2) A restriction, limitation or prohibition that is deemed by subsection (1) to be included in a company's articles shall, in so far as it is inconsistent with another provision of the company's constitution, prevail.

178 Alteration of proprietary company provisions

A proprietary company may, by special resolution, alter any of the proprietary company provisions included, or deemed to be included, in its constitution, but not so that the constitution ceases to contain proprietary company provisions.

179 Constitution of companies limited by guarantee

(1) In the case of a company limited by guarantee and not having a share capital, a provision in the constitution, or in a resolution, of the company purporting to give a person a right to participate in the divisible profits of the company otherwise than as a member is void.

(2) For the purposes of the provisions of this Law relating to the memorandum of a company limited by guarantee and of this section, a provision in the constitution, or in a resolution, of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital even if the nominal amount or number of the shares or interests is not specified.

(3) This section does not apply in relation to a Division 2 company that was originally incorporated:

(a) before 1 October 1954 under the company law of the Capital Territory;
(b) before 1 January 1937 under the company law of New South Wales;
(c) before 31 January 1911 under the company law of Victoria;

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(d) before 21 March 1932 under the company law of Queensland;

(e) before 1 March 1935 under the company law of South Australia;

(f) before 5 October 1962 under the company law of Western Australia;

(g) before 1 February 1921 under the company law of Tasmania; or

(h) before 1 March 1935 under the company law of the Northern Territory;

180 Operation of memorandum and articles

(1) Subject to this Law, the constitution of a company has the effect of a contract under seal:

(a) between the company and each member;

(b) between the company and each eligible officer; and

(c) between a member and each other member;

under which each of the above-mentioned persons agrees to observe and perform the provisions of the constitution as in force for the time being so far as those provisions are applicable to that person.

(2) Subject to section 385, any money payable by a member of a company to the company under the company's constitution is a debt from the member to the company and is of the nature of a specialty debt.

(3) A member of a company, unless either before or after the alteration is made the member agrees in writing to be bound by it, is not bound by an alteration of the constitution made after the date on which the member became a member so far as the alteration:

(a) requires the member to take or subscribe for more shares than the number held by the member at the date of the alteration;

(b) in any way increases the member's liability as at the date of the alteration to contribute to the share capital of, or otherwise to pay money to, the company; or

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(c) increases, or imposes, restrictions on the right to transfer the shares held by the member at the date of the alteration.

(4) Subsection (3) does not apply in relation to an alteration of the constitution of a public company having a share capital (other than a no liability company) if the alteration:

(a) is made by virtue of a special resolution of the kind referred to in subsection 168(1); and

(b) is necessary to ensure that the constitution includes proprietary company provisions.

(5) In this section, ***eligible officer***, in relation to a company, means a director, the principal executive officer or a secretary of the company.

181 Copies of memorandum and articles

(1) A company shall, on being so required by a member, send to the member a copy of the memorandum and of the articles (if any) of the company:

(a) if the company requires the payment of an amount not exceeding the prescribed amount—within the period of 21 days after the payment is received by the company; or

(b) otherwise—within the period of 21 days after the request was made;

or within that period as extended by the Commission.

(2) On being required by the Commission to do so, a Table A proprietary company shall lodge a printed copy of its articles (if any), even if they have not been altered.

(3) Where an alteration of the memorandum or articles of a company has been made, the company shall not issue a copy of the memorandum or articles after the date of alteration unless:

(a) the copy is in accordance with the memorandum or articles as altered by the alteration; or

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(b) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(4) Where an alteration or alterations in the articles of a company has or have been made, the company shall, on being required by the Commission to do so, lodge a printed copy of the articles as altered by the alteration or alterations.

(5) In subsections (3) and (4):

alteration, in relation to a company's memorandum or articles, includes, in the case of a Division 2 or 3 company, an alteration made before the company's registration day.

(6) Where an agreement a copy of which:

(a) is required, or would but for subsection 256(2) be required, to be lodged under section 256; or

(b) was required to be lodged with a person under a previous law corresponding to section 256;

affects the memorandum or articles of a company, the company shall not, after the agreement is entered into, issue or lodge a copy of the memorandum or articles unless a copy of the agreement is annexed to the copy of the memorandum or articles.

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Division 4—Transactions on a company's behalf

182 Confirmation of contracts and authentication and execution of documents

(1) So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of a company may make, vary or discharge a contract in the name of, or on behalf of, the company in the same manner as if that contract were made, varied or discharged by a natural person.

(2) The making, variation or discharging of a contract in accordance with subsection (1) is effectual in law and binds the company and other parties to the contract.

(3) A contract or other document executed, or purporting to have been executed, under the common seal of a company is not invalid merely because a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.

(4) This section does not prevent a company from making, varying or discharging a contract under its common seal.

(5) This section does not apply in relation to a Division 2, 3 or 4 company in relation to the making, variation or discharging of a contract before the company's registration day, but applies otherwise in relation to such a company whether it gives its authority before, on or after that day.

(6) This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.

(7) A document or proceeding requiring authentication by a company may be authenticated by the signature of an officer of the company

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and need not be authenticated under the common seal of the company.

(8) A company may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed signed by such an agent or attorney on behalf of the company and under his, her or its seal or, subject to subsections (10) and (11), under the appropriate official seal of the company, binds the company and has the same effect as if it were under the common seal of the company.

(9) The authority of an agent or attorney empowered under subsection (8), as between the company and a person dealing with him, her or it, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his, her or its authority has been given to the person dealing with him, her or it.

(10) A company may, if authorised by its articles, have for use in place of its common seal outside the State or Territory where its common seal is kept one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used.

(11) The person affixing such an official seal shall, in writing signed by the person, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(12) A document sealed with such an official seal shall be deemed to be sealed with the common seal of the company.

183 Ratification of contracts made before formation of company

(1) In this section:

(a) a reference to a non-existent company purporting to enter into a contract is a reference to:

(i) a person executing a contract in the name of a company, where no such company exists; or

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(ii) a person purporting to enter into a contract as agent or trustee for a proposed company;

(b) a reference to a person who purports to execute a contract on behalf of a non-existent company shall be construed as a reference to a person who executes a contract or purports to enter into a contract as mentioned in subparagraph (a)(i) or (ii);

(c) a reference, in relation to the purported entry into a contract by a non-existent company, to the formation of the company is a reference to:

(i) if a person has executed a contract in the name of a company and no such company exists—the registration, under Division 1 of Part 2.2, of a company that, having regard to all the circumstances, is reasonably identifiable with the company in the name of which the person executed the contract; or

(ii) if a person has purported to enter into a contract as agent or trustee for a proposed company—the registration, under Division 1 of Part 2.2, of a company that, having regard to all the circumstances, is reasonably identifiable with the proposed company.

(2) Where:

(a) a non-existent company purports to enter into a contract; and

(b) the company is formed within a reasonable time after the contract is purported to be entered into;

the company may, within a reasonable time after it is formed, ratify the contract.

(3) Where a company ratifies a contract as provided by subsection (2), the company is bound by, and entitled to the benefit of, that contract as if the company had been formed before the contract was entered into and had been a party to that contract.

(4) Where a non-existent company purports to enter into a contract and:

(a) the company is not formed within a reasonable time after the contract is purported to be entered into; or

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(b) the company is formed within such a reasonable time but does not ratify the contract within a reasonable time after the company is formed;

the other party or each of the other parties to the contract may, subject to subsection (6) and (9), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent company an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the company if:

(c) where the company has not been formed as mentioned in paragraph (a)—the company had been formed, and had ratified the contract as provided by subsection (2); or

(d) where the company has been formed as mentioned in paragraph (b)—the company had ratified the contract as provided by subsection (2);

and the contract had been discharged by a breach constituted by the refusal or failure of the company to perform any obligations under the contract.

(5) Where:

(a) proceedings are brought to recover damages under subsection (4) in relation to a contract purported to be entered into by a nonexistent company; and

(b) the company has been formed;

the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following:

(c) an order directing the company to transfer or pay to a specified party to the contract a specified property, or specified amount not exceeding the value of any benefit, received by the company as a result of the contract;

(d) an order that the company pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.

(6) Where, in proceedings to recover damages under subsection (4) in relation to a contract purported to be entered into by a non-existent company, the court in which the proceedings are brought makes an

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order under paragraph (5)(c), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

(7) Where:

(a) a non-existent company purports to enter into a contract;

(b) the company is formed, and ratifies the contract as provided by subsection (2);

(c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the company to perform all or any of its obligations under the contract; and

(d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the company for damages for breach of the contract;

the court in which the proceedings are brought may, subject to subsection (9), if it thinks it just and equitable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the company to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the company has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

(8) Where a person purports, whether alone or together with another person or other persons, to execute a contract on behalf of a non-existent company, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, release the first-mentioned person from any liability in relation to the contract.

(9) Where a person has, as provided by subsection (8), released another person from liability in relation to a contract that the other person purported to execute on behalf of a non-existent company, then:

(a) notwithstanding subsection (4), the first-mentioned person is not entitled to recover damages from the other person in relation to that contract; and

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(b) a court shall not, in proceedings under subsection (7), order the other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the company has been, or may be, found liable to pay to that first-mentioned person.

(10) Where:

(a) a non-existent company purports to enter into a contract;

(b) the company is formed; and

(c) the company and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract;

any liabilities to which the person who purported to execute the first-mentioned contract on behalf of the company is subject under this section in relation to the first-mentioned contract (including liabilities under an order made by a court under this section) are, by force of this subsection, discharged.

(11) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by a court under this section) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from this section, in relation to the contract.

(12) Where:

(a) a person purports to enter into a contract as trustee for a proposed company; and

(b) the company is formed within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the company is formed;

then, despite any rule of law or equity, the trustee does not have any right or indemnity against the company in respect of the contract.

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(13) For the purposes of this section, a contract may be ratified by a company in the same manner as a contract may be made by a company under section 182, and section 182 has effect as if:

(a) a reference in that section to making a contract were a reference to ratifying a contract; and

(b) the reference in subsection 182(3) to a contract executed, or purporting to have been executed, under the common seal of a company were a reference to a contract ratified, or purporting to have been ratified, under the common seal of a company.

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Part 2.4—Membership and share capital

Division 1—Membership generally

184 Membership of company

A person who agrees to become a member of a company and whose name is entered in the company's register of members becomes a member of the company.

185 Membership of holding company

(1) This section applies where a body corporate (in this section called the ***subsidiary***) is a subsidiary of a company (in this section called the ***holding company***).

(2) The subsidiary cannot be a member of the holding company.

(3) An allotment or transfer to the subsidiary of shares in the holding company is void.

(4) A purported acquisition by the subsidiary of units of shares in the holding company is void.

(5) None of subsections (2), (3) and (4) applies where the subsidiary is concerned as a personal representative.

(6) None of subsections (2), (3) and (4) applies where the subsidiary is concerned as a trustee and neither the holding company nor any of its subsidiaries is beneficially interested under the trust except by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, other than a transaction entered into with an associate of the holding company or of any of its subsidiaries.

(7) If:

(a) the holding company is a Division 2 company that was originally incorporated under a corresponding previous law;

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(b) the subsidiary was a subsidiary, and a member, of the holding company at the commencement of:
   (i) if that Territory is the Capital Territory—the *Companies Ordinance 1962* of that Territory;
   (ii) if the State is New South Wales—the *Companies Act*, 1961 of that State;
   (iii) if that State is Victoria—the *Companies Act* 1961 of that State;
   (iv) if that State is Queensland—*The Companies Act of* 1961 of that State;
   (v) if that State is South Australia—the Companies Act 1962-1981 of that State;
   (vi) if that State is Western Australia—the *Companies Act* 1961 of that State;
   (vii) if that State is Tasmania—the *Companies Act* 1962 of that State; or
   (viii) if that State is the Northern Territory—the *Companies Act* 1961 of that State; and
(c) the subsidiary has been a subsidiary, and a member, of the holding company ever since that commencement;

this section does not prevent the subsidiary from continuing to be such a member but, subject to subsections (5) and (6), the subsidiary does not have a right to vote at meetings of the holding company or of a class of members of the holding company.

(8) If subsection (7) does not apply but the subsidiary already held shares in the holding company at the time when it became a subsidiary of the holding company, this section does not prevent it from continuing to be a member of the holding company but, subject to subsections (5) and (6):
   (a) the subsidiary does not have a right to vote at meetings of the holding company or of a class of members of the holding company; and
   (b) within the period of 12 months after that time or within that period as extended by the Court, the subsidiary shall dispose of all its shares in the holding company.

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(9) Subject to subsections (5) and (6), a reference in subsection (2), (3), (4), (7) or (8) to the subsidiary includes a reference to a nominee for the subsidiary.

(10) If the holding company is a company limited by guarantee or an unlimited company, a reference in this section to shares includes a reference to the interest of a member of the holding company as such a member, whatever the form of that interest and whether or not the holding company has a share capital.

186 Prohibition of carrying on business with fewer than statutory minimum number of members

(1) Where the number of members of a company (counting joint holders of shares as one person) is reduced:

(a) in the case of a proprietary company—below 2; or

(b) in the case of any other company—below 5;

and the company carries on business for more than 6 months while the number is so reduced, a person who, at any time when the company so carries on business after those 6 months, is a member of the company and is aware that the company is carrying on business with fewer than 2 or 5 members, as the case may be:

(c) is severally liable for the payment of any debt of the company contracted at a time when:

(i) the company so carries on business after those 6 months; and

(ii) the person is a member;

and may be severally sued for payment of that debt; and

(d) contravenes this subsection.

(2) Subsection (1) does not apply in relation to a company the whole of the issued shares of which are held by a holding company that is a company.

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Division 2—Shares generally

187 Return as to allotments

(1) Where a company makes an allotment of its shares, or shares in a company are deemed to have been alloted under subsection (6), the company shall, within one month after the allotment is made or deemed to have been made, lodge a return of the allotment stating:

(a) the number and nominal amounts of the shares comprised in the allotment;

(b) the amount (if any) paid, deemed to be paid or due and payable on the allotment of each share;

(c) if the capital of the company is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs; and

(d) subject to subsection (2), the full name, or the surname together with at least one given name and the other initials, and the address of each of the allottees and the number and class of shares allotted to him, her or it.

(2) The particulars mentioned in paragraph (1)(d) need not be included in a return:

(a) where shares have been allotted for cash by a no liability company;

(b) where a company to which subsection 337(1) applies has allotted shares for cash; or

(c) where a company to which subsection 337(1) applies has allotted shares for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

(3) Where shares in a company are allotted, or deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made under a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of the contract.

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(4) If a certified copy of a contract is lodged in accordance with subsection (3), the company shall produce to the Commission at the same time the original contract duly stamped.

(5) Where shares in a company are allotted, or are deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made:

(a) under a contract not reduced to writing;

(b) under a provision of the company's constitution;

(c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders; or

(d) pursuant to the application of money held by the company in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled;

the company shall lodge with the return a statement containing such particulars as are prescribed.

(6) For the purposes of this section, shares in a company that the subscribers to the memorandum have agreed in the memorandum to take shall be deemed to have been allotted to those subscribers on the date of the incorporation of the company.

188 Differences in calls and payments, reserve liability etc.

(1) A company, if so authorised by its articles, may:

(a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;

(b) accept from a member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and

(c) unless it is a no liability company—pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

(2) A limited company may, by special resolution, determine that any portion of its share capital that has not been already called up is not

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capable of being called up except in the event, and for the purposes, of the company being wound up, and thereupon that portion of the company's share capital is not capable of being called up except in the event, and for the purposes, of the company being wound up, but no such resolution prejudices any rights acquired by a person before the passing of the resolution.

189 Share warrants

A company shall not issue a share warrant.

190 Power to issue shares at a discount

(1) A no liability company may issue shares at a discount.

(2) Subject to this section, a company other than a no liability company may issue at a discount shares in a class of shares already issued if:

(a) the issue of the shares at a discount:

(i) is authorised by resolution passed in general meeting of the company; and

(ii) is confirmed by order of the Court;

(b) the resolution specifies the maximum rate of discount at which the shares are to be issued;

(c) the shares are issued within the period of one month after the day on which the issue is confirmed by order of the Court or within that period as extended by the Court; and

(d) the shares are first offered to every holder of shares in that class in proportion to the number of shares in that class already held.

(3) The Court may, if having regard to all the circumstances of the case it thinks proper to do so, make an order confirming the issue on such terms and conditions as it thinks fit.

(4) If there is a prospectus relating to the issue of the shares, the company shall set out in the prospectus particulars of the discount

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allowed or of so much of that discount as has not been written off as at the day of the issue of the prospectus.

(5) An offer made for the purposes of paragraph (2)(d) shall be made by notice specifying the number of shares to which the member is entitled, and specifying a period, being not less than 21 days from the date of the notice, within which the offer may be accepted.

(6) If an offer in respect of shares made in accordance with subsection (5) is not accepted within the period specified by the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

191 Issue of shares at a premium

(1) Where a company issues shares for which it receives a premium, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called the ***share premium account***, and the provisions of this Law relating to the reduction of the share capital of a company, other than subsection 195(6) apply, subject to this section, as if the share premium account were paid-up share capital of the company.

(2) The share premium account may be applied:
- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;
- (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;
- (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the company;
- (d) in the case of a company that carries on life insurance business in Australia—by appropriation or transfer to any statutory fund established and maintained under the *Life Insurance Act 1945*;
- (e) in writing off:
  - (i) the preliminary expenses of the company; or

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(ii) the expenses of, or the payment made in respect of or discount allowed on, any issue of shares in, or debentures of, the company; or

(f) in providing for the premium payable on redemption of debentures or redeemable preference shares.

192 Redeemable preference shares

(1) Subject to this section, a company having a share capital may, if so authorised by its articles, issue preference shares that are, or at the option of the company are to be, liable to be redeemed.

(2) The redemption shall not be taken to reduce the authorised share capital of the company.

(3) The company shall not redeem the shares:

(a) except on such terms, and in such manner, as are provided by the articles;

(b) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(c) unless they are fully paid-up.

(4) The premium (if any) payable on redemption shall be provided for out of profits or out of the share premium account.

(5) Where redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the ***capital redemption reserve*** a sum equal to the nominal amount of the shares redeemed, and the provisions of this Law relating to the reduction of the share capital of a company, other than subsection 195(6), apply, except as provided by this section, as if the capital redemption reserve were paid-up share capital of the company.

(6) Where, under this section, a company has redeemed or is about to redeem preference shares, it may issue shares up to the sum of the

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nominal values of the shares redeemed or to be redeemed as if those preference shares had never been issued.

(7) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares.

(8) Where a company redeems any redeemable preference shares, it shall, within 14 days after so doing, lodge a notice in the prescribed form relating to the shares redeemed.

(9) Shares shall be taken to have been redeemed even if a cheque given in payment of the amount payable upon redemption of the shares has not been presented for payment.

(10) If default is made in complying with this section, the company contravenes this subsection.

193 Power of company to alter its share capital

(1) A company may, if so authorised by its articles, by resolution passed in general meeting alter the provisions of its memorandum in any one or more of the following ways:

(a) by increasing its share capital by the creation of new shares of such amount as it thinks expedient;

(b) by consolidating and dividing all or any of its share capital into shares of larger amount than its existing shares;

(c) by converting, or providing for the conversion of, all or any of its paid-up shares into stock or re-converting, or providing for the reconversion of, that stock into paid-up shares of any denomination;

(d) by subdividing its shares or any of them into shares of smaller amount than is fixed by the memorandum, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived;

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(e) by cancelling shares that, at the date of the passing of the resolution to that effect, no person has taken or agreed to take or that have been forfeited and by reducing the amount of the company's share capital by the amount of the shares so cancelled.

(2) An alteration made in the memorandum in accordance with subsection (1) takes effect on the date of the resolution or such later date as is specified in the resolution.

(3) A cancellation of shares under this section is not a reduction of share capital within the meaning of this Law.

(4) An unlimited company having a share capital may, by any resolution passed for the purposes of subsection 167(1), do either or both of the following:

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital may be called up except in the event, and for the purposes, of the company being wound up;

(b) provide that a specified portion of its uncalled share capital may not be called up except in the event, and for the purposes, of the company being wound up.

194 Validation of shares improperly issued

(1) Where a company has purported to issue or allot shares and:

(a) the creation, issue or allotment of those shares is invalid by reason of any provision of this or any other Act or of the memorandum or articles of the company or for any other reason; or

(b) the terms of the purported issue or allotment are inconsistent with or are not authorised by any such provision;

the Court may, on application by the company, by a holder or mortgagee of any of those shares or by a creditor of the company and on being satisfied that in all the circumstances it is just and equitable so to do, make an order:

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(c) validating the purported issue or allotment of those shares; or
(d) confirming the terms of the purported issue or allotment of the shares;

or both.

(2) On the lodging of an office copy of an order made under subsection (1), the shares to which the order relates shall be deemed to have been validly issued or allotted on the terms of the issue or allotment of the shares.

195 Special resolution for reduction of share capital

(1) Subject to confirmation by the Court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:
(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
(b) cancel any paid-up share capital that is lost or is not represented by available assets; or
(c) pay off any paid-up share capital that is in excess of the needs of the company;

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

(2) A reduction in the paid-up share capital of a company does not of itself operate to reduce the nominal share capital of the company.

(3) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs:
(a) every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of commencement of the winding up the company, would be admissible in proof against the company, is entitled to object to the reduction;

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(b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of the names of creditors entitled to object and, for that purpose, shall ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered; and

(c) where a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not determined, does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs:

(i) if the company admits the full amount of the debt or claim or, through not admitting it, is willing to provide for it—the full amount of the debt or claim; or

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained—an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(4) The Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of subsection (3) shall not apply in respect of creditors included in a class of creditors.

(5) The Court may, if satisfied with respect to each creditor who under subsection (3) is entitled to object, that:

(a) the creditor's consent to the reduction has been obtained;

(b) the creditor's debt has been discharged or secured; or

(c) the creditor's claim has determined or has been secured;

make an order confirming the reduction on such terms and conditions as it thinks fit.

(6) An order made under subsection (5) shall show:

(a) the amount of the share capital of the company as altered by the order;

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(b) the number of shares into which the share capital is to be divided;
(c) the amount of each share; and
(d) the amount (if any) that at the date of the order is deemed to be paid up on each share.

(7) A company shall not act upon a resolution for the reduction of share capital before the date on which a certified copy of the resolution and an office copy of the order of the Court have been lodged with the Commission but such a resolution may specify a date, earlier than the first-mentioned date but not earlier than the date of the resolution, as the date from which the reduction of capital is to have effect.

(8) A certificate of the Commission stating that a certified copy of the resolution and an office copy of the order made under subsection (5) have been registered by the Commission is conclusive evidence that all the requirements of this Law with respect to reduction of share capital have been complied with in respect of the company and that the share capital of the company is such amount as is stated in the order.

(9) Upon lodgment of a copy of an order as mentioned in subsection (7), the particulars shown in the order pursuant to subsection (6) shall be deemed to be substituted for the corresponding particulars in the memorandum and the substitution shall be deemed to be an alteration of the memorandum for the purposes of this Law.

(10) A member of a company, past or present, is not liable in respect of any share in the company to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by an order made under subsection (5) and the amount paid, or the reduced amount (if any) that is deemed to have been paid, on the share (as the case may be) but, where the name of a creditor who is entitled under subsection (3) to object to a reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the

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meaning of the provisions of this Law with respect to winding up by the Court, to pay the amount of his debt or claim:

(a) every person who was a member of the company at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of that debt or claim an amount not exceeding the amount that he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, may, if it thinks fit, settle accordingly a list of the names of persons liable to contribute by reason of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding up;

but nothing in this subsection affects the rights of the contributories among themselves.

(11) An officer of a company shall not:

(a) knowingly conceal the name of a creditor entitled to object to a reduction in the share capital of the company; or

(b) knowingly misrepresent the nature or amount of the debt or claim of any creditor of the company.

(12) This section does not apply to an unlimited company, but nothing in this Law precludes an unlimited company from reducing in any way its share capital, including any amount in its share premium account.

(13) The granting by a company to a member of the company of a right to occupy or use land, or a building or a part of a building, owned or held under lease by the company, whether for consideration or not, shall not be regarded as being a reduction of the share capital of the company if it is made pursuant to a provision of the memorandum or articles of the company under which a member of the company may, by virtue of his being such a member, be

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granted such a right, whether the provision provides for consideration to be given for it or not.

(14) Subsection (13) applies whether the grant is by way of lease, under-lease, licence or otherwise, and whether or not, in the case of a grant in respect of a building or part of a building, the grant also entitles the member to a right of use of a garage, outbuilding or other structure or of a passage, stairway or convenience of a building or of land appurtenant to the building or part of the building.

(15) This section does not apply in relation to a reduction of capital, or to a cancellation of shares that have been allotted, where the reduction or cancellation results from, or is necessary because of, the operation of:

(a) Chapter 6;

(b) regulations made for the purposes of that Chapter; or

(c) a previous law corresponding to that Chapter or to such regulations;

and nothing in this Law operates to invalidate any such reduction of capital or cancellation of shares.

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Division 3—Class rights

196 Commission to be informed of special rights carried by, or division or conversion of, shares

(1) Where a company allots shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 256 applies, the company shall, unless the rights attached to the shares are in all respects the same as the rights attached to shares previously allotted, lodge with the Commission, within one month after the allotment of the shares, a statement in the prescribed form relating to those rights.

(2) Where:

(a) shares in a company that were not previously divided into classes are so divided; or

(b) shares in a company that are of one class are converted into shares of another class;

the company shall, within one month after the division or conversion, lodge with the Commission a return in the prescribed form showing particulars of the division or conversion.

(3) If a company contravenes this section, the company and any officer of the company who is in default each contravene this subsection.

197 Rights of holders of classes of shares

(1) This section applies to a company having a share capital that is divided into classes of shares.

(2) Where:

(a) rights are attached to shares included in a class of shares;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) neither the memorandum nor the articles declares or declare those rights to be unalterable;

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the company may, with the consent in writing of the holders of three-quarters of the issued shares included in that class or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

(3) Where:

(a) rights are attached to shares included in a class of shares; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a specified proportion of the holders of the issued shares included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares;

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

(4) Where rights are attached to shares included in a class of shares and:

(a) those rights are at any time varied or abrogated; or

(b) the memorandum or articles is or are altered so as to authorise the variation or abrogation of those rights;

the holders of not less in the aggregate than 10% of the issued shares included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

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(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) For the purposes of this section, the allotment by a company of preference shares ranking equally with existing preference shares shall be deemed to be a variation of the rights attached to those existing preference shares unless the allotment of the first-mentioned shares was authorised by the terms of allotment of the existing preference shares or by the memorandum or articles in force at the time when the existing preference shares were allotted.

(9) Nothing in section 172 or 176 affects the operation of this section.

198 Rights of holders of shares

(1) This section applies to a company having a share capital that is not divided into classes of shares.

(2) Where:

(a) rights are attached to shares in a company;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) neither the memorandum nor the articles declares or declare those rights to be unalterable;

the company may, with the consent in writing of the holders of three-quarters of the issued shares in the company or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the

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memorandum or articles so as to authorise the variation or abrogation of those rights.

(3) Where:

(a) rights are attached to shares in a company; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a specified proportion of the holders of the issued shares in the company or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares;

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

(4) Where rights are attached to shares in a company and:

(a) those rights are at any time varied or abrogated; or

(b) the memorandum or articles is or are altered so as to authorise the variation or abrogation of those rights;

the holders of not less in the aggregate than 10% of the issued shares in the company may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the shareholders

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of the company, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) For the purposes of this section:

(a) the allotment by a company of shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 256 applies shall be deemed to be a variation of the rights attached to shares previously issued unless the rights attached to the first-mentioned shares are in all respects the same as the rights attached to shares previously issued; and

(b) the division of shares in a company into classes of shares shall be deemed to be a variation of the rights attached to those shares unless, in relation to each share in the company, the rights attached to that share are in all respects the same after the division as they were before the division.

(9) Nothing in section 172 or 176 affects the operation of this section.

199 Rights of classes of members

(1) This section applies to a company not having a share capital.

(2) Where:

(a) members of the company included in a class of members have special rights;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) neither the memorandum nor the articles declares or declare those rights to be unalterable;

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the company may, with the consent in writing of three-quarters of the members included in that class or with the sanction of a special resolution passed at a meeting of members included in that class, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

(3) Where:

(a) members of the company included in a class of members have special rights; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a specified proportion of the members included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the members included in that class;

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the members included in that class or with the sanction of such a resolution passed at a meeting of those members.

(4) Where members of the company included in a class of members have special rights and:

(a) those rights are at any time varied or abrogated; or

(b) the memorandum or articles is or are altered so as to authorise the variation or abrogation of those rights;

members included in that class who constitute not less than 10% of the members included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the members entitled to make the application, by such one or more of their number as they appoint in writing.

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(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, as the case may be, and shall, if not satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge and office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) Nothing in section 172 or 176 affects the operation of this section.

200 Rights of holders of preference shares to be set out in memorandum or articles

A company shall not allot any preference shares or convert any issued shares into preference shares unless there are set out in the memorandum or articles of the company the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

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Division 4—Maintenance of capital

201 Dividends payable from profits only

(1) No dividend shall be payable to a shareholder of a company except out of profits or under section 191.

(2) A director or executive officer of a company who, wilfully pays, or permits to be paid, except under section 191, a dividend out of what he or she knows not to be profits:

(a) without prejudice to any other liability, contravenes this subsection; and

(b) is also liable to the company's creditors for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits;

and the creditors, or the liquidator suing on behalf of the creditors, may recover the amount for which a director or executive officer is liable under this subsection.

(3) If the whole amount is recovered from a particular director or executive officer, he or she may recover contribution against any other person liable who has directed, or consented to, the payment.

(4) A liability imposed by this section on a person does not, on the person's death, extend or pass to his or her executors or administrators, nor is his or her estate liable under this section.

(5) Proceedings may be brought under subsection (2) for the recovery of an amount even if a person has not been convicted of an offence under that subsection.

(6) In proceedings under subsection (2) for the recovery of an amount, the liability of a person under that subsection in respect of the amount may be established on the balance of probabilities.

(7) In this section:

dividend includes a bonus and a payment by way of bonus.

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202 Company may pay interest out of capital in certain cases

Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant that cannot be made profitable for a long period, the company may pay interest on so much of that share capital as is for the time being paid up and charge the interest so paid to capital as part of the construction or provision, but:

(a) no such payment shall be made unless it is:

(i) authorised by the articles of the company or by special resolution; and

(ii) approved by the Court;

(b) before approving any such payment, the Court may, at the expense of the company, appoint a person to inquire and report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;

(c) the payment shall be made for such period only as is determined by the Court, but that period shall not in any case extend beyond a period of 12 months after the works or buildings have been completed or the plant has been provided;

(d) the rate of interest shall not exceed 8% per annum or, if another rate is prescribed, that other rate; and

(e) the payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

203 Restriction on application of capital of company

(1) Subject to section 204, a company shall not apply any of its shares or capital money either directly or indirectly in making a payment to a person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company, whether the shares are or the money is

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so applied by being added to the purchase price of property acquired by the company or to the contract price of work to be executed for the company or the money is paid out of the nominal purchase price or contract price or otherwise.

(2) Without limiting the generality of subsection (1), but subject to section 190, a company shall not issue shares at a discount.

(3) A company that contravenes this section is not guilty of an offence by virtue of this section or section 1311, but each officer of the company who is involved in the contravention contravenes this subsection.

(4) Where:

(a) a person is convicted by a court of an offence under this section in relation to a company; and

(b) the court is satisfied that the company has suffered loss or damage as a result of the act that constituted the offence;

the court may, in addition to imposing a penalty, order the person to pay compensation to the company of such amount as the court specifies, and any such order may be enforced as if it were a judgment of that court.

(5) Where a contravention of this section takes place:

(a) if a person other than the company concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the company may, whether or not that person or any other person has been convicted of an offence under subsection (3) in relation to that contravention, recover from the person as a debt due to the company by action in any court of competent jurisdiction an amount equal to the profit; and

(b) where the company concerned has suffered loss or damage as a result of the contravention—the company may recover an amount equal to the loss or damage from any person involved in the contravention, whether or not that person or any other person has been convicted of an offence under subsection (3)

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in relation to that contravention, as a debt due to the company by action in any court of competent jurisdiction.

204 Power to make certain payments

(1) Subject to subsection (2), a company may make a payment by way of brokerage or commission to a person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company if, and only if:

(a) the payment is not prohibited by the constitution;

(b) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in the prospectus in respect of the shares or, if there is no such prospectus, in a statement lodged before the company becomes liable to make the payment; and

(c) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in that prospectus or statement.

(2) Subsection (1) does not permit a company to make a payment by way of brokerage or commission in respect of shares in the company if the amount of the payment, or, if another payment or other payments by way of brokerage or commission has or have been made by the company in respect of those shares, the sum of the amount of the first-mentioned payment and the other payment or payments, exceeds:

(a) 10% of the total of the amount payable in respect of the shares upon their allotment; or

(b) such amount (if any), or an amount calculated at such rate (if any), as is authorised by the articles;

whichever is the lesser.

(3) A vendor to, promoter of, or person who receives payment in money or shares from, a company may apply any part of the money or shares so received in making any payment that would, if it were made directly by the company, be lawful under this section.

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205 Company financing dealings in its shares etc.

(1) Except as otherwise expressly provided by this Law, a company shall not:

(a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with:

(i) the acquisition by any person, whether before, or at the same time as, the giving of financial assistance, of:

(A) shares or units of shares in the company; or

(B) shares or units of shares in a holding company of the company; or

(ii) the proposed acquisition by any person of:

(A) shares or units of shares in the company; or

(B) shares or units of shares in a holding company of the company;

(b) whether directly or indirectly, in any way:

(i) acquire shares or units of shares in the company; or

(ii) purport to acquire shares or units of shares in a holding company of the company; or

(c) whether directly or indirectly, in any way, lend money on the security of:

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company of the company.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise.

(3) For the purposes of this section, a company shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in paragraph (1)(a)(in this subsection called the ***relevant purpose***) if:

(a) the company gave the financial assistance for purposes that included the relevant purpose; and

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(b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

(4) For the purposes of this section, a company shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in paragraph (1)(a) if, when the financial assistance was given to a person, the company was aware that the financial assistance would financially assist:

(a) the acquisition by a person of shares or units of shares in the company; or

(b) where shares in the company had already been acquired—the payment by a person of any unpaid amount of the subscription payable for the shares or of any premium payable in respect of the shares, or the payment of any calls on the shares.

(5) A company that contravenes this section is not guilty of an offence by virtue of this section or section 1311, but each officer of the company who is involved in the contravention contravenes this subsection.

(6) Where:

(a) a person is convicted by a court of an offence under subsection (5) (including an offence under that subsection that is deemed to have been committed by virtue of section 5 of the *Crimes Act 1914* or the corresponding provision of that Act as it applies as a law of this jurisdiction); and

(b) the court is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence;

the court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or other person, as the case may be, of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

(7) The power of a court under section 1318 to relieve a person to whom that section applies, wholly or partly and on such terms as

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the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (6) of this section from the liability to have such an order made against him.

(8) Nothing in subsection (1) prohibits:

(a) the payment of a dividend by a company in good faith and in the ordinary course of commercial dealing;

(b) a payment made by a company pursuant to a reduction of capital in accordance with section 195;

(c) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;

(d) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it:

(i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by any charge over the property of that company; or

(ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;

(e) an aquisition by a company of an interest (other than a legal interest) in fully-paid shares in the company where no consideration is provided by the company, or by any corporation that is related to the company, for the acquisition;

(f) the purchase by a company of shares in the company pursuant to an order of a court;

(g) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for any amount payable to the company in respect of the shares; or

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(h) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company permitting the subscriber to make payments for the shares (including payments in the respect of any premium) by instalments;

but nothing in this subsection:

(j) shall be construed as implying that a particular act of a company would, but for this subsection, be prohibited by subsection (1); or

(k) shall be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares.

(9) Nothing in subsection (1) prohibits:

(a) the making of a loan, the giving of a guarantee or the provision of security by a company in the ordinary course of its ordinary business where:

(i) that business includes the lending of money, or the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, that loan, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or

(b) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of fully-paid shares or units of fully-paid shares in the company or in a holding company of the company to be held by or for the benefit of employees of the company or of a corporation that is related to the company, including any director holding a salaried employment or office in the company or in the corporation, as the case may be, where:

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(i) in the case where neither subparagraph (ii) nor subparagraph (iii) applies—the company has at a general meeting;

(ii) in the case where the company is a subsidiary of a listed corporation or listed corporations—the company and the listed corporation or listed corporations have at general meetings; or

(iii) in the case where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company have at general meetings;

approved a scheme for the provision of money for such acquisitions and the financial assistance is given in accordance with the scheme.

(10) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if:

(a) the company, by special resolution, resolves to give financial assistance for the purpose of or in connection with, that acquisition;

(b) where:

(i) the company is a subsidiary of a listed corporation; or

(ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory;

the listed corporation or the ultimate holding company, as the case may be, has, by special resolution, approved the giving of the financial assistance;

(c) the notice specifying the intention to propose the resolution referred to in paragraph (a) as a special resolution sets out:

(i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and

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(ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations;

and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or any class of those creditors or members;

(d) the notice specifying the intention to propose the resolution referred to in paragraph (b) as a special resolution is accompanied by a copy of the notice, and a copy of the statement, referred to in paragraph (c);

(e) not later than the day next following the day when the notice referred to in paragraph (c) is dispatched to members of the company there is lodged with the Commission a copy of that notice and a copy of the statement that accompanied that notice;

(f) the notice referred to in paragraph (c) and a copy of the statement referred to in that paragraph are given to:

(i) all members of the company;

(ii) all trustees for debenture holders of the company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the company—all debenture holders, or all debenture holders of that class, as the case may be, of the company whose names are, at the time when the notice is dispatched, known to the company;

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(g) the notice referred to in paragraph (d) and the accompanying documents are given to:
   (i) all members of the listed corporation or of the ultimate holding company;
   (ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company; and
   (iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company—all debenture holders or debenture holders of that class, as the case may be, of the listed corporation or of the ultimate holding company whose names are, at the time when the notice is dispatched, known to the listed corporation or the ultimate holding company;

(h) within 21 days after the general meeting of the company at which the resolution referred to in paragraph (a) is passed or, in a case to which paragraph (b) applies, the general meeting of the listed corporation or ultimate holding company at which the resolution referred to in that paragraph is passed, whichever is the later, a notice:
   (i) setting out the terms of the resolution referred to in paragraph (a); and
   (ii) stating that any of the persons referred to in subsection (12) may, within the period referred to in that subsection, make an application to the Court opposing the giving of the financial assistance;

   is published, in each State and Territory in which the company is carrying on business, in a daily newspaper circulating generally in that State or Territory;

(j) no application opposing the giving of the financial assistance is made within the periods referred to in subsection (12) or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance; and

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(k) the financial assistance is given in accordance with the terms of the resolution referred to in paragraph (a) and not earlier than:
   (i) in a case to which subparagraph (ii) does not apply—the expiration of the period referred to in subsection (12); or
   (ii) if an application or applications has or have been made to the Court within that period:
      (A) where the application or each of the applications has been withdrawn—the withdrawal of the application or of the last of the applications to be withdrawn; or
      (B) in any other case—the decision of the Court on the application or applications.

(11) Where, on application to the Court by a company, the Court is satisfied that the provisions of subsection (10) have been substantially complied with in relation to a proposed giving by the company of financial assistance of a kind mentioned in that subsection, the Court may, by order, declare that the provisions of that subsection have been complied with in relation to the proposed giving by the company of financial assistance.

(12) Where a special resolution referred to in paragraph (10)(a) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice referred to in paragraph (10)(h), by:
(a) a member of the company;
(b) a trustee for debenture holders of the company;
(c) a debture holder of the company;
(d) a creditor of the company;
(e) if the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries:
   (i) a member of that subsidiary or of any of those subsidiaries;

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(ii) a trustee for debenture holders of that subsidiary or of any of those subsidiaries;

(iii) a debenture holder of that subsidiary or of any of those subsidiaries; or

(iv) a creditor of that subsidiary or of any of those subsidiaries;

(f) if paragraph (10)(b) applies:

(i) a member of the listed corporation or ultimate holding company that passed a special resolution referred to in that paragraph;

(ii) a trustee for debenture holders of that listed corporation or ultimate holding company;

(iii) a debenture holder of that listed corporation or ultimate holding company; or

(iv) a creditor of that listed corporation or ultimate holding company; or

(g) the Commission.

(13) Where an application or applications opposing the giving of financial assistance by a company in accordance with a special resolution passed by the company is or are made to the Court under subsection (12), the Court:

(a) shall, in determining what order or orders to make in relation to the application or applications, have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors of the company or of any class of them; and

(b) shall not make an order approving the giving of the financial assistance unless the Court is satisfied that:

(i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance; and

(ii) the proposed financial assistance would not, after taking into account the financial position of the company (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or

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members of the company or of any class of those creditors or members;

and may do all or any of the following:

(c) if it thinks fit, make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;

(d) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by a subsidiary of the company) of the interests of dissentient members;

(e) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks expedient;

(f) make an order disapproving the giving of the financial assistance or, subject to paragraph (b), an order approving the giving of the financial assistance.

(14) Where the Court makes an order under this section in relation to the giving of financial assistance by a company, the company shall, within 14 days after the order is made, lodge with the Commission an office copy of the order.

(15) The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the company of any duty to the company under section 232 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

(16) A reference in this section to an acquisition or proposed acquisition of shares or units of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

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(17) This section does not apply in relation to the doing of any act or thing pursuant to a contract entered into before the commencement of this Law if the doing of that act or thing would have been lawful if this Law had not been enacted.

206 Consequences of company financing dealings in its shares etc.

(1) Except as provided by this section:

(a) the validity of a contract or transaction is not affected by a contravention of paragraph 205(1)(a);

(b) the validity of a contract or transaction is not affected by a contravention of paragraph 205(1)(b) unless the contract or transaction effects the acquisition that constitutes the contravention; and

(c) the validity of a contract or transaction is not affected by a contravention of paragraph 205(1)(c) unless the contract or transaction effects the loan that constitutes the contravention.

(2) Where a company makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid by reason that:

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 205; or

(b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section;

the first-mentioned contract or transaction is, subject to the following provisions of this section, voidable at the option of the company by notice in writing given to the other party, or by notices in writing given to each of the other parties, to that contract or transaction.

(3) The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorise the member, holder of debentures, trustee or director to give a notice or notices under subsection (2) in the name of the company.

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(4) Where:

(a) a company makes or performs a contract, or engages in a transaction;

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 205 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and

(c) the Court is satisfied, on the application of the company or of any other person, that the company or that other person has suffered, or is likely to suffer, loss or damage as a result of:

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void by reason of section 205 or having become void, or becoming void, under this section; or

(iv) a related contract or transaction being void by reason of section 205 or having become void, or becoming void, under this section;

the Court may make such order or orders as it thinks just and equitable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the company or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under subsection (4) include:

(a) an order directing a person to refund money or return property to the company or to another person;

(b) an order directing a person to pay to the company or to another person a specified amount not exceeding the amount of the loss or damage suffered by the company or other person; and

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(c) an order directing a person to indemnify the company or another person against any loss or damage that the company or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

(6) If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of paragraphs 205(10)(a) to (j), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company is given to a person:

(a) the person to whom the certificate is given is not under any liability to have an order made against him under subsection (4) by reason of any contract made or performed, or any transaction engaged in, by him in reliance on the certificate, and

(b) any such contract or transaction is not invalid, and is not voidable under subsection (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 205 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the company concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of subsection 205(10) had not been complied with in relation to the financial assistance to which the certificate related.

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(8) For the purposes of subsection (7), a person shall, in the absence of proof to the contrary, be deemed to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In any proceeding, a document purporting to be a certificate given under subsection (6) shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under subsection (6) shall, in the absence of proof to the contrary, be deemed to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of subsection 205(10) have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person is guilty of an offence.

(12) It is a defence to a prosecution for an offence against subsection (11) if the defendant proves that at the time when he or she signed the certificate he or she believed on reasonable grounds that all the requirements of subsection 205(10) had been complied with in respect of the proposed giving of financial assistance to which the certificate related.

(13) The power of a court under section 1318 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (4) of this section from the liability to have such an order made against him.

(14) If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in paragraph 205(1)(a) or lends money as mentioned in paragraph 205(1)(c), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial

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assistance or money shall be deemed for the purposes of this section to be related to the first-mentioned contract or transaction.

(15) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court prevail.

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Division 5—Register of members

207 Divisions not to apply to mutual life assurance companies

Nothing in this Division (other than subsection 210(5)) applies to a company to which section 140 of the *Life Insurance Act 1945* applies so long as the company complies with that section.

208 Notices relating to non-beneficial and beneficial ownership of shares

(1) Where, at a particular time:

(a) an instrument of transfer of shares in a company is lodged, by or on behalf of the transferee, with the company for registration of the transfer;

(b) having regard to all relevant circumstances, it may reasonably be expected that, upon registration of the transfer, the transferee will hold non-beneficially particular shares (in this subsection called the ***relevant shares***), being any of the shares to which the instrument of transfer relates; and

(c) the instrument of transfer does not include a notice that:

(i) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non-beneficially;

(ii) sets out particulars of the relevant shares; and

(iii) is signed by or on behalf of the transferee,

the transferee contravenes this subsection.

(2) The fact that a person has contravened subsection (1) does not affect the validity of the registration of a transfer of shares in a company.

(3) Where:

(a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph (1)(c) and is lodged with the company for registration of the transfer; and

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(b) upon registration of the transfer, the transferee holds beneficially particular shares (in this subsection called the ***relevant shares***), being any of the shares particulars of which are set out in the notice;

then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares non-benefically, give to the company a notice that:

(c) sets out the name and address of the transferee;

(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

(4) Where:

(a) an instrument of transfer of shares in a company is lodged with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds non-beneficially particular shares (in this subsection called the ***relevant shares***), being any of the shares to which the instrument of transfer relates (other than, in a case where the instrument of transfer includes a notice of the kind referred to in paragraph (1)(c), the shares particulars of which are set out in the notice);

then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the transferee;

(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially;

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

(5) Where:

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(a) at a particular time, a person holds beneficially shares in a company; and

(b) immediately after that time, the person holds non-beneficially particular shares (in this subsection called the ***relevant shares***), being any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the person;

(d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially;

(e) specifies that time and sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the person.

(6) Where:

(a) at a particular time, a person holds non-beneficially shares in a company; and

(b) immediately after that time, the person holds beneficially particular shares (in this subsection called the ***relevant shares***), being any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:

(c) sets out the name and address of the person;

(d) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially;

(e) specifies that time and sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the person.

(7) In proceedings under this section, a person shall, unless the contrary is established, be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in

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relation to the transfer to, or ownership by, the person of a share or shares in the company concerned, was aware at that time.

(8) In this section, unless the contrary intention appears:

any includes all;

company means a company as defined in section 9, but does not include a body corporate that is a company for the purposes of Part 6.7.

(9) For the purposes of this section and of section 209:

(a) where, at a particular time, a person:

(i) holds shares in a capacity other than that of sole beneficial owner; or

(ii) without limiting the generality of subparagraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person;

the first-mentioned person shall be taken to hold the shares non-beneficially at that time; and

(b) a person who holds shares at a particular time shall be taken to hold the shares beneficially at that time unless the person holds the shares non-beneficially at that time.

209 Register and index of members

(1) A company shall keep a register of its members and enter in that register:

(a) the names and addresses of the members;

(b) in the case of a non-listed company having a share capital—in relation to each member:

(i) if the member holds shares in the company beneficially—a statement of the shares that the member so holds; and

(ii) if the member holds shares in the company non-beneficially—a statement of the shares that the member so holds and, in relation to that statement, a

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notation to the effect that the member holds the shares non-beneficially within the meaning of this section;

(c) in the case of a listed company having a share capital—a statement of the shares held by each member;

(d) the date at which the name of each person was entered in the register as a member;

(e) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and

(f) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) A statement in the register of members of a company, being a statement of shares held by a member, shall:

(a) distinguish each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding; and

(b) set out the amount paid, or agreed to be considered as paid, on the shares.

(3) Notwithstanding subsections (1) and (2), where a company has converted any of its shares into stock and given notice of the conversion to the Commission, the company shall enter in its register of members:

(a) in the case of a non-listed company—in relation to each member who holds stock:

(i) if the member holds stock beneficially—a statement of the amount of stock, or of the number of stock units, as the case requires, that the member so holds; and

(ii) if the member holds stock non-beneficially—a statement of the amount of stock, or of the number of stock units, as the case requires, that the member so holds and a notation to the effect that the member holds the stock non-beneficially within the meaning of this section; or

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(b) in the case of a listed company—a statement of the amount of stock, or of the number of stock units, as the case requires, held by each member who holds stock;

and shall alter or delete accordingly the statements in the register that relate to shares held by members.

(4) For the purposes of paragraphs (1)(b) and (c) and of subsections (2) and (3), where 2 or more persons jointly hold shares in a company, whether or not any of the persons holds any other shares in the company, the persons shall together be deemed, in relation to the first-mentioned shares, to be a member of the company.

(5) In determining for the purposes of subsections (1) and (3) whether a member of a non-listed company holds shares in the company beneficially or non-beneficially, regard shall be had only to prescribed information in relation to the company.

(6) Where:

(a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph 208(1)(c) and is lodged with the company for registration of the transfer; and

(b) the company registers the transfer;

the information contained in the notice shall be taken, for the purposes of subsection (5) of this section, to be prescribed information in relation to the company.

(7) Information contained in a notice given to a non-listed company under subsections 208(3), (4), (5) and (6), or in a statement furnished to a non-listed company pursuant to a notice given to a person under section 718 or 719, shall be taken, for the purposes of subsection (5) of this section, to be prescribed information in relation to the company.

(8) Notwithstanding anything in subsection (1), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to former members need not be supplied to a

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person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(9) The register of members is *prima facie* evidence of any matters inserted in that register as required or authorised by this Law.

(10) A company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days after the day on which any alteration is made in the register of members, make any necessary alteration in the index.

(11) The index shall, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be found readily.

(12) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

(13) In this section:

listed company means a company that is a company for the purposes of Part 6.7;

non-listed company means a company other than a listed company.

210 Inspection and closing of register

(1) A company may close the register of members or part of that register for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any calendar year.

(2) The register and index shall be open for inspection:
- (a) by any member of the company—without charge; and
- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the

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company requires or, where the company does not require the payment of an amount, without charge.

(3) A person may request a company for a copy of the register or any part of the register (but only so far as it relates to names, addresses, number of shares held and amounts paid on shares) and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(4) If default is made in complying with subsection (2) or (3), the company and any officer of the company who is in default are each guilty of an offence.

(5) Any member of a company to which section 140 of the *Life Insurance Act 1945* applies is entitled to inspect any register, index, or other record of the company that relates to the members of the company, but may make copies of or take extracts from such a register, index or record only in relation to names, addresses and voting entitlements of the members of the company.

(6) This section has effect subject to Part 6.8.

211 Consequences of default by agent

Where, by virtue of paragraph 1302(1)(b), the register of members is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 210 or subsection 1302(1) or (4) or a requirement of this Law in relation to the production of the register, that other person is liable to the same penalties as if the person were an officer of the company who was in default, and the power of the Court under section 1303 extends to the making of

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orders against that other person and the person's officers and employees.

212 Power of Court to rectify register

(1) If:

(a) an entry is omitted from the register;

(b) an entry is made in the register without sufficient cause;

(c) an entry wrongly exists in the register;

(d) there is an error or defect in an entry in the register; or

(e) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member;

a person aggrieved, a member or the company may apply to the Court for rectification of the register.

(2) On an application under subsection (1), the Court may:

(a) refuse the application; or

(b) order:

(i) rectification of the register; and

(ii) payment by the company of any damages sustained by any party to the application.

(3) On any application under subsection (1), the Court may decide:

(a) any question relating to the right of a person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises between:

(i) a member or alleged member on the one hand and another member or alleged member on the other hand; or

(ii) a member or alleged member on the one hand and the company on the other hand; and

(b) generally any question necessary or expedient to be decided with respect to the rectification of the register.

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(4) Where a company is required by this Law to lodge a return containing a list of its members with the Commission, the Court, when making an order for rectification of the register, shall by its order direct a notice of the rectification to be so lodged.

213 Trustee etc. may be registered as owner of shares

(1) In this section:

share, in relation to a body corporate, means a share in the body that is registered in a register or branch register kept in Australia.

(2) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a corporation may be registered as the holder of that share as trustee, executor or administrator of that estate.

(3) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a corporation may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

(4) Where:

(a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and

(b) the incapable person is the registered holder of a share in a corporation;

the first-mentioned person may be registered as the holder of that share as administrator of that estate.

(5) Where:

(a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of a person who, through mental or physical infirmity, are incapable of

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managing their affairs, to administer the estate of a person who is so incapable; and

(b) the incapable person is entitled in equity to a share in a corporation;

the first-mentioned person may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate.

(6) Where:

(a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is the registered holder of that share;

the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

(7) Where:

(a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is entitled in equity to that share;

the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

(8) A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection, subject:

(a) to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and

(b) to no other liabilities in respect of the share.

(9) Shares in a corporation registered in a register or branch register and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch

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register in such a way as to identify them as being held in respect of the trust.

(10) Except as provided in this section and section 209:

(a) no notice of a trust, whether express, implied or constructive, shall be entered on a register or a branch register kept in Australia or be receivable by the Commission;

(b) no liabilities are affected by anything done under a preceding subsection of this section or under section 209; and

(c) nothing so done affects the body corporate concerned with notice of a trust.

(11) A person shall, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so hold the shares.

214 Branch registers

(1) A company that has a share capital may cause a branch register of members to be kept at a place within or outside Australia but outside the State or Territory where its principal register is kept.

(2) Where a member of a company that keeps its principal register in a particular State or Territory is resident in another State or Territory and requests the company in writing to register in a branch register in that other State or Territory shares held by the member, then, if the company keeps a branch register in that other State or Territory, the company shall register in that branch register the shares held by that member.

(3) A branch register of a company shall be deemed to be part of the company's register of members.

(4) A company that keeps a branch register shall keep it in the same manner as this Law requires the company to keep its principal register.

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(5) A company shall keep, at the place where its principal register is kept, a duplicate of each of its branch registers, properly entered up from time to time.

(6) A duplicate kept under subsection (5) shall be deemed to be part of the principal register.

(7) Within 28 days after an entry is made in a branch register of a company, the company shall send a copy of the entry to the place where its principal register is kept.

(8) Subject to subsections (5), (6) and (7), a company shall distinguish shares in the company that are registered in a branch register from the shares registered in its principal register.

(9) Subject to subsections (5), (6) and (7), while shares in a company are registered in a branch register, the company shall not register in any other register a transaction in relation to the shares.

(10) A company may discontinue a branch register and shall, if it does so, transfer all entries in that register:

- (a) if that register was in a State or Territory where the company keeps another branch register—to that other branch register; or
- (b) otherwise—to the principal register.

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Division 6—Options

215 Register of options

(1) A company shall keep a register of options granted to persons to take up unissued shares in the company.

(2) The company shall, within 14 days after the grant of an option to take up unissued shares in the company, enter in the register the following particulars:

(a) the name and address of the holder of the option;

(b) the date on which the option was granted;

(c) the number and description of the shares in respect of which the option was granted;

(d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;

(e) the consideration (if any) for the grant of the option;

(f) the consideration (if any) for the exercise of the option or the manner in which that consideration is to be ascertained or determined;

(g) such other particulars as are prescribed.

(3) The register is *prima facie* evidence of any matters inserted in the register as required or authorised by this Law.

(4) The register shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(5) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person:

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(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(6) A company shall keep, at the place where the register referred to in subsection (1) is kept, a copy of every instrument by which an option to take up unissued shares in the company is granted and, for the purposes of subsections (4) and (5), those copies shall be deemed to be part of the register referred to in subsection (1).

(7) Notwithstanding subsection (6), a company is not required to keep a copy of any instrument by which an option has been granted if the option has been granted official quotation by a securities exchange.

(8) Failure by a company to comply with any of the provisions of this section in relation to an option does not affect any rights in respect of the option.

(9) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

216 Options over unissued shares

(1) An option granted after the commencement of this section by a public company that enables any person to take up unissued shares in the company after a period of 5 years has elapsed from the date on which the option was granted is void.

(2) Subsection (1) does not apply in a case where the holders of debentures of a company have an option to take up shares in the company by way of redemption of the debentures.

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Chapter 3—Internal administration

Part 3.1—Registered office and name

217 Registered office of company

A company shall, as from its registration day, have a registered office within Australia to which all communications and notices may be addressed and which shall be open:

(a) where a notice has been lodged by the company under subsection 218(2)—for such hours (being not less than 3) between the hours of 9 a.m. and 5 p.m. of each business day as are specified in the later of that notice or a notice lodged by the company under subsection 218(4); or

(b) otherwise—for not less than 5 hours between 10 a.m. and 4 p.m. of each business day.

218 Notice of address of registered office and office hours

(1) On the lodging of:

(a) an application for the registration of a company under Division 1 of Part 2.2; or

(b) an application for a body corporate to be registered as a company under Division 3 or 4 of Part 2.2;

there shall be lodged a notice in the prescribed form of the address of the proposed registered office of the company.

(2) On the lodging of a notice under subsection (1) or at any later time, notice in the prescribed form of the hours (being not less than 3) between the hours of 9 a.m. and 5 p.m. of each business day during which the company's registered office is to be open may be lodged.

(3) A company shall lodge notice in the prescribed form of a change in the situation of its registered office not later than 7 days after the day on which the change occurred.

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(4) Where a notice has been lodged under subsection (2), the company shall, within 7 days after a change in the hours during which its registered office is open, lodge a notice, in the prescribed form, of the change.

218A Registered office of Division 2 company

(1) Subject to this Part, the registered office of a Division 2 company is taken to be at the place that, immediately before the commencement of Division 2 of Part 2.2, was taken by a previous law of this jurisdiction corresponding to subsection 220(2) to be the situation of the company's registered office for the purposes of a previous law of this jurisdiction corresponding to subsection 220(1).

(2) Section 217 and subsections 218(4) and 220(2) apply in relation to a Division 2 company as if a reference in them to a provision of this Law included a reference to a previous law of this jurisdiction corresponding to that provision of this Law.

219 Publication of company's name and registration number

(1) A company shall set out in legible characters on its common seal, and on each of its other seals, its name followed by, unless its registration number is part of its name, the expression "Australian Company Number" and its registration number.

(2) A company shall set out its name, in legible characters, on:
- (a) every public document of the company that is signed, issued or published; and
- (b) every eligible negotiable instrument of the company that is signed or issued.

(3) On:
- (a) every public document of a company that is signed, issued or published; and
- (b) every eligible negotiable instrument of a company that is signed or issued;

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the company shall, unless its registration number is part of its name, set out in legible characters, after the company's name where it first appears, the expression "Australian Company Number" and the company's registration number.

(4) A company may comply with subsection (1), (2) or (3) by setting out:

(a) the abbreviation "Aust." instead of the word "Australian";

(b) the abbreviation "Co." instead of the word "Company";

(c) the abbreviation "No." instead of the word "Number"; or

(d) the abbreviation "A.C.N." instead of the expression "Australian Company Number".

(5) A person (whether or not an officer of the company) shall not, on a company's behalf:

(a) use, or authorise the use of, a seal that purports to be a seal of the company but contravenes subsection (1); or

(b) issue, sign or publish a public document of the company that contravenes subsection (2) or (3).

(6) A person (whether an officer of the company or not) shall not sign or issue, or authorise to be signed or issued, on a company's behalf, an eligible negotiable instrument of the company that contravenes subsection (2).

(7) A person who contravenes subsection (6) is liable to the holder of the eligible negotiable instrument for the amount due on it unless that amount is paid by the company.

(8) A company shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of its registered office and of every office and place at which its business is carried on and that is open and accessible to the public:

(a) its name; and

(b) in the case of its registered office—the expression "Registered Office".

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220 Service of documents on company

(1) A document may be served on a company by leaving it at, or. by sending it by post to, the registered office of the company.

(2) For the purposes of subsection (1), the situation of the registered office of a company:

(a) in a case to which neither paragraph (b) nor paragraph (c) applies—shall be deemed to be the place notice of the address of which has been lodged under subsection 218(1);

(b) if only one notice of a change in the situation of the registered office has been lodged under subsection 218(3)—shall, on and from:

(i) the day that is 7 days after the day on which the notice was lodged; or

(ii) the day that is specified in the notice as the day from which the change is to take effect;

whichever is later, be deemed to be the place the address of which is specified in the notice; or

(c) if 2 or more notices of a change in the situation of the registered office have been lodged under subsection 218(3)—shall, on and from:

(i) the day that is 7 days after the day on which the later or latest of those notices was lodged; or

(ii) the day that is specified in the later or latest of those notices as the day from which the change is to take effect;

whichever is later, be deemed to be the place the address of which is specified in the relevant notice;

and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the registered office of the company in a return or other document (not being a notice under subsection 218(3)) lodged after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

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(4) Without limiting the operation of subsection (1), a document may be served on a company by delivering a copy of the document personally to each of 2 directors of the company who reside in Australia or an external Territory.

(5) Where a liquidator of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.

(6) Where an official manager of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the official manager notice of which has been lodged.

(7) Nothing in this section affects:

(a) the power of the Court to authorise a document to be served on a company in a manner not provided for by this section; or

(b) the operation of an Australian law authorising a document to be served on a company in a manner not provided for by this section.

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Part 3.2—Officers

221 Directors

(1) A public company shall have at least 3 directors and a proprietary company shall have at least 2 directors.

(2) A body corporate is incapable of being appointed as a director of a company.

(3) In the case of a public company, at least 2 directors shall be persons who ordinarily reside within Australia and, in the case of a proprietary company, at least one director shall be a person who ordinarily so resides.

(4) Where the articles of a company incorporated before 1 July 1982 provide for the appointment of one director only, the articles shall be deemed to provide for the appointment of 2 directors.

222 Restrictions on appointment or advertisement of director

(1) A person shall not be named as a director or proposed director in the memorandum or articles of a company, or in a prospectus issued by or on behalf of a company, unless, before the registration of the memorandum or articles or the issue of the prospectus, as the case may be, the person has, either personally or by an agent authorised in writing for the purpose, signed and lodged with the Commission a consent in writing to act as a director and:

(a) signed the memorandum for a number of shares not less than the person's qualification (if any);

(b) signed and lodged with the Commission a written undertaking to take from the company, and pay for, the person's qualification shares (if any);

(c) made and lodged with the Commission a written statement to the effect that a number of shares, not less than the person's qualification (if any), are registered in the person's name; or

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(d) in the case of a company formed, or intended to be formed, by way of reconstruction of another body corporate or group of bodies corporate or to acquire the shares in another body corporate or group of bodies corporate—made and lodged with the Commission a written statement that the person was a shareholder in that other body corporate or in one or more of the bodies corporate of that group and that, as a shareholder, the person will be entitled to receive and have registered in the person's name a number of shares not less than the person's qualification by virtue of the terms of an agreement relating to the reconstruction.

(2) Where a person has signed and lodged an undertaking to take, and pay for, the person's qualification shares, the person is, as regards those shares, in the same position as if the person had signed the memorandum for that number of shares.

(3) The preceding provisions of this section (other than the provisions relating to the signing of a consent to act as director) do not apply to:

(a) a company that does not have a share capital;

(b) a proprietary company; or

(c) a prospectus issued by or on behalf of a company, or the articles adopted by a company, after the end of one year after the date of incorporation of the company.

(4) On the lodging of the memorandum of a company for registration, the persons desiring the incorporation of the company shall also lodge with the Commission a list, certified by one of those persons to be correct, of the persons who have consented to be directors of the company, and, if the list contains the name of any person who has not so consented, the person who certified the list to be correct contravenes this subsection.

223 Qualification of director

(1) Without affecting the operation of any of the preceding provisions of this Part, a director of a company who is by the articles required

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to hold a specified share qualification and is not already qualified shall obtain the qualification within 2 months after the person's appointment or such shorter period as is fixed by the articles.

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

224 Vacation of office

(1) The office of a director of a company is, by force of this section, vacated if the person holding the office:

   (a) has not within the period referred to in subsection 223(1) obtained the person's qualification;
   (b) after so obtaining that qualification ceases at any time to hold the qualification;
   (c) becomes an insolvent under administration;
   (d) is convicted of an offence in respect of a contravention of subsection 229(2);
   (e) becomes subject to a section 230 order;
   (f) becomes subject to a section 599 order; or
   (g) becomes subject to a section 600 notice.

(2) A person whose office is vacated because of paragraph (1)(a) or (b) or was vacated because of a corresponding previous law is incapable of being re-appointed as a director until the person has obtained the person's qualification.

(3) A person whose office is vacated because of paragraph (1)(c) or was vacated because of a corresponding previous law is incapable, without the leave of the Court, of being re-appointed as a director until the person ceases to be an insolvent under administration.

(4) A person whose office is vacated because of paragraph (1)(d) or was vacated because of a corresponding previous law is incapable, without the leave of the Court, of being re-appointed as a director until the end of the period of 5 years referred to in

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subsection 229(2) or in a corresponding previous law, as the case may be.

(5) A person whose office is vacated because of paragraph (1)(e) or (f) or was vacated because of a corresponding previous law is incapable of being re-appointed as a director until the end of the period specified in the order referred to in that paragraph or in the order referred to in that corresponding previous law, as the case may be.

(6) A person whose office is vacated because of paragraph (1)(g) or was vacated because of a corresponding previous law is incapable, without the leave of the Court, of being re-appointed as a director until the end of the period specified in the notice referred to in that paragraph or in the notice referred to in that corresponding previous law, as the case may be.

(7) A person whose office is vacated because of paragraph (1)(a) or (b) or was vacated because of a corresponding previous law shall not purport to act as a director of the company unless the person has been validly re-appointed as a director.

225 Appointment of directors of public company to be voted on individually

(1) At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution shall not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being cast against it.

(2) A resolution passed pursuant to a motion moved in contravention of this section is void, whether or not the moving of the motion was objected to at the time.

(3) Where a resolution pursuant to a motion moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment applies.

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(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for the person's appointment.

(5) Nothing in this section applies to a resolution altering the company's articles.

(6) Nothing in this section prevents the election of 2 or more directors by ballot or poll.

226 Validity of acts of directors and secretaries

(1) The acts of a director or secretary of a company are valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

(2) Where a person whose office as director of a company is vacated pursuant to subsection 224(1) or was vacated pursuant to a corresponding previous law purports to do an act as a director of the company, that act is as valid, in relation to a person dealing with the company in good faith and for value and without actual knowledge of the matter because of which the office of the first-mentioned person was vacated, as if that office had not been vacated.

227 Removal of directors

(1) A public company may, by resolution, remove a director before the end of the director's period of office, notwithstanding anything in its articles or in any agreement between it and the director.

(2) Where a director so removed was appointed to represent the interests of a particular class of shareholders or debenture holders, the resolution to remove the director does not take effect until a successor has been appointed.

(3) Special notice is required of:
   (a) a resolution to remove a director under this section; or

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(b) a resolution to appoint a person in place of a director so removed at the meeting at which the director is removed.

(4) As soon as practicable after receiving notice of an intended resolution to remove a director under this section, the company shall send a copy of the notice to the director concerned, and the director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

(5) Where notice is given in accordance with subsection (1) and the director concerned makes with respect to the notice written representations to the company (not exceeding a reasonable length) and requests that the representations be notified to members of the company, the company shall, unless the representations are received by it too late for it to do so:

(a) state, in any notice of the resolution given to members of the company, that the representations have been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting has been or is sent.

(6) If a copy of the representations is not so sent because they were received too late or because of the company's default, the director may, without prejudice to any right to be heard orally, require that the representations be read out at the meeting.

(7) Notwithstanding the preceding provisions of this section, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the appliction either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(8) On an application under subsection (7), the Court may order that the costs of the applicant be paid in whole or in part by the director, even if the director is not a party to the application.

(9) A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

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(10) A person appointed as a director in place of a person removed under this section shall be treated, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become a director on the day on which the person in whose place that person is appointed was last appointed a director.

(11) Nothing in the preceding provisions of this section:

(a) deprives a person removed under those provisions of compensation or damages payable to the person in respect of the termination of the person's appointment as director or of any appointment terminating with that as director; or

(b) derogates from any power to remove a director that may exist apart from this section.

(12) A director of a public company shall not be removed by, or be required to vacate his or her office because of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

228 Age of directors

(1) Subject to this section, a person who has obtained the age of 72 years shall not be appointed or act as a director of:

(a) a public company; or

(b) a company that is a subsidiary of a public company.

(2) Nothing in subsection (1) prevents a person from acting as a director of a company during the period beginning on the day on which the person attains the age of 72 years and ending at the conclusion of the annual general meeting beginning next after that day.

(3) The office of a director of a public company or of a subsidiary of a public company becomes vacant at the conclusion of the annual general meeting of that public company or that subsidiary, as the case may be, beginning next after the director attains the age of 72 years.

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(4) An act done by a person as a director is valid notwithstanding that it is afterwards discovered that he or she had attained the age of 72 years at the time of his or her appointment or that his or her appointment had terminated by virtue of subsection (3).

(5) Where the office of a director has become vacant by virtue of subsection (3), no provision for the automatic re-appointment of retiring directors in default of another appointment applies in relation to that director.

(6) If a vacancy created by virtue of subsection (3) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(7) Subject to subsection (8), a person who has attained the age of 72 years may, by a resolution stating the age of that person, being a resolution:

  (a) of which not less than 14 days' written notice has been given to the members of the company entitled to vote stating that the person is a candidate for election who has attained the age of 72 years and stating the person's age; and
  (b) which is passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or where proxies are allowed, by proxy, at a general meeting of that company;

be appointed or re-appointed as a director of that company to hold office until the conclusion of the next annual general meeting of the company.

(8) Where the company is a subsidiary of a public company, the appointment or re-appointment referred to in subsection (7) does not have effect unless:

  (a) the person appointed or re-appointed is a director of the holding company; or
  (b) the appointment or re-appointment of the person as a director of the company has been approved by a resolution of the holding company:

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(i) of which not less than 14 days' written notice was given to the members of the holding company entitled to vote stating that the person was a candidate for election as a director of the company who had attained the age of 72 years and stating the person's age; and

(ii) which was passed by a majority of not less than three-quarters of such members of the holding company as, being entitled so to do, voted in person or, where proxies were allowed, by proxy at a general meeting of the holding company.

(9) Where:

(a) the articles of a company limited by guarantee provide for the holding of postal ballots for the election of a director or directors; and

(b) a postal ballot for the election of a director or directors is held, being a postal ballot in which:

(i) the members entitled to vote have been given notice in writing by the company stating that a candidate for election has attained the age of 72 years and stating the age of the candidate; and

(ii) that candidate is elected by a majority of not less than three-quarters of the members who, being entitled to vote, vote in the ballot;

that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next annual general meeting of the company.

(10) Where the articles of a company limited by guarantee provide for the election or appointment of a director or directors otherwise than by members at a general meeting or by postal ballot of members and the Commission declares in writing that this section does not apply to the company or its directors, then, subject to such conditions (if any) as the Commission specifies in the declaration, this section does not so apply.

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(11) A vacancy in the office of a director occurring by virtue of subsection (3) shall not be taken into account in determining when other directors are to retire.

(12) Nothing in this section limits or affects the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his or her office at any age less than 72 years.

(13) A person is incapable of being appointed as a director of a company unless the person has attained the age of 18 years.

229 Certain persons not to manage certain bodies corporate

(1) An insolvent under administration must not, without the leave of the Court, manage a corporation.

(3) A person who has, whether before or after the commencement of this Part, been convicted:

(a) on indictment of an offence against an Australian law, or any other law, in connection with the promotion, formation or management of a body corporate or corporation; or

(b) of serious fraud; or

(c) of any offence for a contravention of section 232, 590, 591, 592, 595, 996 or 1307, of Part 6.6, of Division 2 of Part 7.11, or of a previous law corresponding to any of those provisions;

shall not, within 5 years after the conviction or, if the person was sentenced to imprisonment, after release from prison, without the leave of the Court, manage a corporation.

(3A) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.

(4) In any proceeding for a contravention of subsection (3), a certificate by a prescribed authority stating that a person was released from prison on a specified date is *prima facie* evidence that that person was released from prison on that date.

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(5) When granting leave under this section, the Court may impose such conditions or restrictions as it thinks fit and a person shall not contravene any such condition or restriction.

(6) A person intending to apply for leave of the Court under this section shall give to the Commission not less than 21 days notice of the person's intention so to apply.

(7) The Court may at any time, on the application of the Commission, revoke leave granted by the court under this section.

(8) Any leave granted by a court under a corresponding previous law of this jurisdiction before the commencement of this Part has effect for the purposes of this section as if it had been granted by the Court under this section.

230 Court may order persons not to manage certain bodies corporate

(1) Where, on application by the Commission or a person who is a prescribed person in relation to the body corporate concerned, or any of the bodies corporate concerned, the Court is satisfied:

(a) that:

(i) a body corporate has, during a period in which a person (in this subsection called the ***relevant person***) was a relevant officer of the body corporate repeatedly breached relevant legislation; and

(ii) the relevant person failed to take reasonable steps to prevent the body corporate so breaching relevant legislation;

(b) that:

(i) each of 2 or more bodies corporate has, at a time when a person (in this subsection also called the ***relevant person***) was a relevant officer of the body corporate, breached relevant legislation; and

(ii) in each case the relevant person failed to take relevant steps to prevent the body corporate from breaching relevant legislation;

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(c) that:

(i) a person (in this subsection also called the ***relevant person***) has repeatedly breached relevant legislation; and

(ii) on 2 or more of the occasions when the relevant person breached relevant legislation, the relevant person was a relevant officer of a body corporate (whether or not the relevant person was a relevant officer of the same body corporate on each of those occasions); or

(d) that, at any time during a period in which a person (in this subsection also called the ***relevant person***) has been or was a relevant officer of a body corporate, the relevant person acted dishonestly, or failed to exercise a reasonable degree of care and diligence, in the performance of the relevant person's duties as an officer of the body corporate;

the Court may by order prohibit the relevant person, for such period as is specified in the order, from managing a corporation.

(2) Where an order has been made under subsection (1) on the application of a person other than the Commission, the person shall, within 7 days after the making of the order, lodge an office copy of the order.

(3) A person who is subject to a section 230 order (whether made before or after the commencement of this section) must not manage a corporation.

(3A) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.

(4) In this section, a reference to a period in which a person has been or was a relevant officer of a body corporate includes a reference to such a period that elapsed, or part of which elapsed, before the commencement of this Part.

(5) For the purposes of this section:

(a) a body corporate or other person shall be taken to have breached relevant legislation if the body corporate or other

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person has contravened a provision of a relevant enactment; and

(b) a body corporate or another person may be taken to have repeatedly breached relevant legislation if the body corporate or the other person has:

(i) on 2 or more occasions, contravened a particular provision of a relevant enactment;

(ii) contravened 2 or more provisions of a relevant enactment; or

(iii) contravened provisions of 2 or more relevant enactments.

(6) In this section:

body corporate includes an unincorporated registrable body;

prescribed person, in relation to a body corporate, means:

(a) an official manager, liquidator or provisional liquidator of the body corporate;

(b) a member of the body corporate;

(c) a creditor of the body corporate; or

(d) a person who is authorised by the Commission to make applications under this section, or to make an application under this section in relation to the body corporate;

relevant enactment means this Law or a previous law corresponding to provisions of this Law;

relevant officer, in relation to a body corporate, means a director, secretary or executive officer of the body corporate.

231 Disclosure of interests in contracts, property, offices etc.

(1) Subject to this section, a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon a practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors.

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(2) The requirements of subsection (1) do not apply in respect of an interest of a director of a company that consists only of being a member or creditor of a company that is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a company shall not be taken to be, or to have been at any time, interested in a contract or proposed contract merely because:

(a) where the contract or proposed contract relates to a loan to the company—the director has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(b) where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a body corporate that is related to the company—the director is a director of that body corporate.

(4) Subsection (3) has effect not only for the purposes of this Law but also for the purposes of any rule of law, but does not affect the operation of any provision in the articles of the company.

(5) For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that the director is an officer or member of a specified body corporate or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that body corporate or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if:

(a) the notice states the nature and extent of the director's interest in the body corporate or firm;

(b) when the question of confirming or entering into the contract is first taken into consideration, the extent of the director's interest in the body corporate or firm is not greater than is stated in the notice; and

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(c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(6) A director of a company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director shall, in accordance with subsection (7), declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(7) A declaration required by subsection (6) in relation to the holding of an office or the possession of any property shall be made by a person:

(a) where the person holds the office or possesses the property as mentioned in subsection (6) when the person becomes a director—at the first meeting of directors held after:

(i) the person becomes a director; or

(ii) the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge;

whichever is later; or

(b) where the person begins to hold the office or comes into possession of the property as mentioned in subsection (6) after the person becomes a director—at the first meeting of directors held after the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge.

(8) A secretary of a company shall record every declaration under this section in the minutes of the meeting at which it was made.

(9) Except as provided in subsection (3), this section is in addition to, and not in derogation of, the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as a director.

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232 Duty and liability of officers of certain bodies corporate

(1) In this section:

officer, in relation to a corporation, means:

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

(b) a receiver, or receiver and manager, of property of the corporation, or any other authorised person who enters into possession or assumes control of property of the corporation for the purpose of enforcing any charge;

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

(d) a liquidator of the corporation; and

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

(2) An officer of a corporation shall at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office.

(3) The penalty applicable to a contravention of subsection (2) is:

(a) if the contravention was committed with intent to deceive or defraud the body corporate, members or creditors of the body corporate or creditors of any other person or for any other fraudulent purpose—$20,000 or imprisonment for 5 years, or both; or

(b) otherwise—$5,000.

(4) An officer of a corporation shall at all times exercise a reasonable degree of care and diligence in the exercise of his or her powers and the discharge of his or her duties.

(4A) A reference in subsection (2) or (4) to the exercise of powers, or the discharge of duties, of an officer of a corporation is a reference to the exercise of those powers, or the discharge of those duties:

(a) in any case—in this jurisdiction; or

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(b) if the body is a local corporation—outside this jurisdiction; or

(c) otherwise—outside this jurisdiction but in connection with:

(i) the corporation carrying on business in this jurisdiction; or

(ii) an act that the corporation does, or proposes to do, in this jurisdiction; or

(iii) a decision by the corporation whether or not to do, or to refrain from doing, an act in this jurisdiction.

(5) An officer or employee of a corporation, or a former officer or employee of a corporation, must not, in relevant circumstances, make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

(6) An officer or employee of a corporation must not, in relevant circumstances, make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

(6A) A reference in subsection (5) or (6), in relation to a corporation, to doing an act in relevant circumstances is a reference to doing the act:

(a) if the body is a local corporation—in this jurisdiction or elsewhere; or

(b) otherwise—in this jurisdiction.

(7) Where:

(a) a person is convicted of an offence for a contravention of this section; and

(b) the court is satisfied that the corporation has suffered loss or damage as a result of the act or omission that constituted the offence;

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay

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compensation to the corporation of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

(8) Where a person contravenes a provision of this section in relation to a corporation, the corporation may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the corporation by action in any court of competent jurisdiction:

(a) if that person or any other person made a profit as a result of the contravention—an amount equal to that profit; and

(b) if the corporation has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

(9) Where a person who contravenes this section has been found by a court to be liable to pay an amount to a person because of a contravention of Part 7.11 that arose out of or was constituted by the same act or transaction as the contravention of this section, the amount of the liability of the person under this section shall be reduced by the first-mentioned amount.

(10) For the purposes of subsection (9), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction as that from which another liability arose lies on the person liable to pay the amount.

(11) This section has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office or employment in relation to a corporation and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

233 Liability of directors for debts etc. incurred by body corporate acting as trustee

(1) Where:

(a) a relevant body corporate while acting or purporting to act in the capacity of trustee of a trust, incurs a liability:

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(i) in the case of a company—whether within or outside Australia; or
(ii) in the case of a registered foreign company—within Australia; or
(iii) otherwise—within this jurisdiction; and
(b) the relevant body corporate is for any reason not entitled to be fully indemnified out of the assets of the trust in respect of the liability; and
(c) the relevant body corporate has not discharged, and is unable to discharge, the liability or a part of the liability;

the relevant body corporate and the persons who were directors of the relevant body corporate when the liability was incurred and were not innocent directors in relation to the incurring of the liability are jointly and severally liable to discharge the liability or the undischarged part of the liability, as the case may be.

(2) For the purposes of this section, a trustee of a trust shall not, merely because:
(a) the trust has no assets; or
(b) the assets of the trust are insufficient to indemnify the trustee in respect of the liability concerned;

be taken not to be entitled to be fully indemnified out of the assets of the trust in respect of a liability.

(3) In this section:

Australia includes the external Territories;

innocent director, in relation to the incurring of a liability by a relevant body corporate while acting or purporting to act in a capacity of trustee of a trust, means a person who:
(a) was a director of the relevant body corporate at the time when the liability was incurred; and
(b) if the persons who were directors of the relevant body corporate at that time had been at that time the trustees of the trust and had incurred the liability, would have been entitled to be fully indemnified in respect of the liability by one or more of the other trustees;

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liability means a debt, liability or other obligation;

relevant body corporate means:

(a) a company; or

(b) a registrable body other than a registrable local body.

234 Loans to directors

(1) Subject to this section, a company shall not, whether directly or indirectly:

(a) make a loan to:

(i) a director of the company, a spouse of such a director, or a relative of such a director or spouse;

(ii) a director of a body corporate that is related to the company, a spouse of such a director, or a relative of such a director or spouse;

(iii) a trustee of a trust under which a person referred to in subparagraph (i) or (ii) has a beneficial interest where the loan is made to the trustee in the capacity as trustee;

(iv) a trustee of a trust under which a body corporate has a beneficial interest, where a person referred to in subparagraph (i) or (ii) has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate, being a loan made to the trustee in the capacity as trustee; or

(v) a body corporate, where a person referred to in subparagraph (i) or (ii) has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate; or

(b) give a guarantee or provide security in connection with a loan made or to be made by another person to a natural person or body corporate referred to in paragraph (a).

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(2) For the purposes of subsection (1), where:

(a) a company:

(i) makes a loan to a body corporate or gives a guarantee or provides security in connection with a loan made to a body corporate; or

(ii) makes a loan to a trustee of a trust under which a body corporate has a beneficial interest, or gives a guarantee or provides security in connection with a loan made to a trustee of a trust under which a body corporate has a beneficial interest;

(b) the company has a relevant interest or relevant interests in shares in the body corporate; and

(c) a person has, or 2 or more persons together have, a relevant interest or relevant interests in shares in the company;

the matters referred to in paragraphs (b) and (c) shall be disregarded for the purpose of determining whether the person has, or the persons together have, as the case may be, a relevant interest or relevant interests in the shares referred to in paragraph (b).

(3) Nothing in subsection (1) applies:

(a) to anything done by a company that is an exempt proprietary company;

(b) to a loan made by a company to, or a guarantee given or security provided by a company in relation to, a body corporate that is related to the company if the making of the loan, the giving of the guarantee or the provision of the security has been authorised by a resolution of the directors;

(c) subject to subsection (4), to anything done by a company to provide a person with funds to meet expenditure incurred or to be incurred by the person for the purposes of the company or for the purpose of enabling the person properly to perform duties as an officer of the company;

(d) subject to subsection (4), to anything done by a company to provide a person who is engaged in the full-time employment of the company or of a body corporate that is related to the company with funds to meet expenditure incurred or to be incurred by the person in purchasing or otherwise acquiring

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premises to be used by the person as the person's principal place of residence;

(e) to a loan made by a company to a person who is engaged in the full-time employment of the company or of a body corporate that is related to the company, where:

(i) if neither subparagraph (ii) nor (iii) applies—the company has at a general meeting;

(ii) if the company is a subsidiary of a listed company or listed companies—the company and the listed company or listed companies have at general meetings; or

(iii) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company have at general meetings;

approved a scheme for the making of such loans and the loan is made in accordance with the scheme; or

(f) to a loan made, guarantee given or security provided by a company in the ordinary course of its ordinary business where:

(i) that business includes the lending of money or the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the company or in respect of which the company gives the guarantee or provides the security is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise.

(4) Paragraph (3)(c) or (d) does not authorise the making of any loan, the entering into any guarantee or the provision of any security except:

(a) with the prior approval of:

(i) if neither subparagraph (ii) or (iii) applies—the company;

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(ii) if the company is a subsidiary of a listed company or listed companies—the company and the listed company or listed companies; or

(iii) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company;

given at a general meeting of the company or at general meetings of the company and the listed company or listed companies or of the company and the ultimate holding company, as the case may be, at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the making of the loan, the giving of the guarantee or the provision of the security is not approved:

(i) if neither subparagraph (ii) nor (iii) applies—by the company at or before the next annual general meeting of the company;

(ii) if the company is a subsidiary of a listed company or listed companies—by the company at or before the next annual general meeting of the company or by the listed company or by each listed company at or before the next annual general meeting of the listed company concerned; or

(iii) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—by the company at or before the next annual general meeting of the company or by the ultimate holding company at or before the next annual general meeting of the ultimate holding company;

the loan be repaid or the liability under the guarantee or security be discharged, as the case may be, within 6 months after the conclusion of that meeting.

(5) A company that makes a loan, gives a guarantee or provides security in contravention of this section is not guilty of an offence,

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but a person involved in the contravention contravenes this subsection.

(6) The penalty applicable to a contravention of subsection (5) is:

(a) if it was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of any other person or for any other fraudulent purpose—$20,000 or imprisonment for 5 years, or both; or

(b) otherwise—$5,000.

(7) Where a company makes a loan, gives a guarantee or provides security in contravention of this section:

(a) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a director of the company or of a body corporate that is related to the company or a spouse of such a director, or a relative of such a director or spouse:

(i) the directors of the company; and

(ii) any officers of the company who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them, have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be;

(b) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust referred to in subparagraph (1)(a)(iii):

(i) any director of the company, or of a body corporate that is related to the company, by virtue of whose beneficial interest under the trust the making of the loan, the giving of the guarantee or the provision of the security contravened this section; and

(ii) any other officers of the company who are liable to be prosecuted in respect of the contravention, whether or

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not they, or any of them have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be;

(c) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust under which a body corporate (in this paragraph called the ***relevant body corporate***) has a beneficial interest in circumstances referred to in subparagraph (1)(a)(iv):

(i) any director of the company, or of a body corporate that is related to the company, by virtue of whose relevant interest or relevant interests in shares in the relevant body corporate the making of the loan, the giving of the guarantee or the provision of the security contravened this section; and

(ii) any other officers of that company or of the relevant body corporate who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them, have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be; or

(d) in a case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a body corporate referred to in subparagraph (1)(a)(v)(in this paragraph called the ***relevant body corporate***):

(i) any director of the company, or of a body corporate that is related to the company, by virtue of whose relevant interest or relevant interests in shares in the relevant body corporate the making of the loan, the giving of the guarantee or the provision of the security contravened this section; and

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(ii) any other officers of that company or of the relevant body corporate who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them, have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be.

(8) It is a defence to a prosecution for a contravention of subsection (1) or (5) or to a proceeding instituted in respect of a liability under subsection (7) if it is proved that the defendant had no knowledge of the making of the loan, the giving of the guarantee or the provision of the security.

(9) Nothing in this section prevents the company from recovering the amount of, or of any interest on, any loan made, or any amount for which it becomes liable under any guarantee given or in respect of any security provided, contrary to this section.

(10) If a person has made a loan in relation to which a company has given a guarantee or provided security in contravention of this section, the person may enforce the guarantee or security against the company if, and only if:

(a) where the company is a proprietary company—a certificate signed by a director and a secretary of the company certifying that the company was an exempt proprietary company was given to the person before the guarantee was given or the security was provided; or

(b) in any case—a certificate signed by a director and a secretary of the company certifying that the company was not prohibited by this section from giving the guarantee or providing the security was given to the person before the guarantee was given or the security was provided and the person did not know, and had no reason to believe, that the certificate was incorrect.

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(11) A director or secretary of a company shall not give to a person a certificate referred to in subsection (10) that is false.

(12) This section is in addition to, and not in derogation of, any other law in force in this jurisdiction.

235 Register of directors' shareholdings etc.

(1) A company shall keep a register showing with respect to each director of the company particulars of:

(a) shares in the company or in a body corporate that is related to the company, being shares in which the director has a relevant interest, and the nature and extent of that interest;

(b) debentures of, or prescribed interests made available by, the company or a body corporate that is related to the company, being debentures or prescribed interests in which the director has a relevant interest, and the nature and extent of that interest;

(c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in, debentures of, or prescribed interests made available by, the company or a body corporate that is related to the company; and

(d) contracts to which the director is a party or under which the director is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in, debentures of, or prescribed interests made available by, the company or a body corporate that is related to the company.

(2) A company need not show in its register with respect to a director particulars of shares in a body corporate that is related to the company and is a wholly-owned subsidiary of the company or of another body corporate.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the

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first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) A company shall, within 7 days after receiving notice from a director under paragraph 236(1)(a) or a corresponding previous law, enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, prescribed interests, rights, options and contracts to which the notice relates and, in respect of shares, debentures, prescribed interests, rights or options acquired or contracts entered into after the director became a director:

(a) the price or other consideration for the transaction (if any) by reason of which an entry in required to be made under this section; and

(b) the date of:

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event because of which an entry is required to be made under this section.

(5) A company shall, within 3 days after receiving a notice from a director under paragraph 236(1)(b) or a corresponding previous law, enter in its register the particulars of the change referred to in the notice.

(6) A company is not, because of anything done under this section, to be taken for any purpose to have notice of, or to be upon inquiry as to, the right of a person to or in relation to a share in, debenture of, or prescribed interest made available by, the company.

(7) A register kept by a company under this section shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

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(8) A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to the person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after the payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.

(9) A company shall produce its register at the start of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(10) It is a defence to a prosecution for failing to comply with subsection (1) or (4) in respect of particulars relating to a director if it is proved that the failure was due to the failure of the director to comply with section 236 with respect to those particulars.

(11) In determining for the purposes of this section whether a person has a relevant interest in a debenture or prescribed interest, the provisions of Division 5 of Part 1.2 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture or prescribed interest.

236 General duty to make disclosure

(1) A director of a company shall give written notice to the company of:

(a) such particulars relating to shares, debentures, prescribed interests, rights, options and contracts as are necessary for the purposes of compliance by the company with the provisions of section 235;

(b) particulars of any change in respect of the particulars referred to in paragraph (a), including the consideration (if any) received as a result of the event given rise to the change;

(c) such matters and events affecting or relating to the director as are necessary for the purposes of compliance by the company

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with any of the provisions of section 242 that are applicable in relation to the director;

(d) such matters and events affecting or relating to the director as are necessary for the purposes of compliance by the company with any of the provisions of Chapter 6; and

(e) the date and place of the director's birth.

(2) A director required to give a notice under subsection (1) shall give the notice:

(a) in the case of a notice under paragraph (1)(a), within 14 days after:

(i) the date on which the director became a director; or

(ii) the date on which the director became aware that the director had a relevant interest in the shares, debentures or prescribed interests, the date on which the director became aware that the director had acquired the rights or options or the date on which the director entered into the contracts, as the case requires;

whichever last occurs;

(b) in the case of a notice under paragraph (1)(b), within 14 days after the director becomes aware of the occurrence of the event giving rise to the change referred to in that paragraph;

(c) in the case of a notice under paragraph (1)(c), within 14 days after the director becomes aware of the matter or the occurrence of the event;

(d) in the case of a notice under paragraph (1)(d), as soon as practicable after becoming aware that the company requires or will require the information for the purposes of compliance with any of the provisions of Chapter 6; and

(e) in the case of a notice under paragraph (1)(e), within 14 days after the date on which the director became a director.

(3) A company shall, within 7 days after the receipt by it of a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

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(4) A person who is the principal executive officer, or a secretary, of a company shall give written notice to the company:

(a) of such matters and events affecting or relating to the person as are necessary for the purposes of compliance by the company with any of the provisions of section 242; and

(b) of the date and place of the person's birth.

(5) A person required to give a notice under subsection (4) shall give the notice:

(a) in the case of a notice under paragraph (4)(a)—within 14 days after the person becomes aware of the matter or the occurrence of the event; and

(b) in the case of a notice under paragraph (4)(b)—within 14 days after the day on which the person becomes the principal executive officer, or a secretary, as the case may be, of the company.

(6) In any proceedings under this section, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the employer's or principal's interest or interests in a share in, a debenture of, or a prescribed interest made available by, the company concerned, was aware at that time.

(7) In determining for the purposes of this section whether a person has a relevant interest in a debenture or prescribed interest, the provisions of Division 5 of Part 1.2 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture or prescribed interest.

(8) Nothing in this section requires a person to give notice to a company of any matter or event of which the person has previously given notice to the company, whether for the purposes of this section or of a corresponding previous law.

237 Benefits for loss of, or retirement from, office

(1) Subject to this section:

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(a) a company, an associate of a company (other than a body corporate that is related to the company and is itself a company) or a prescribed superannuation fund in relation to a company shall not give a prescribed benefit to a person in connection with the retirement of a person from a prescribed office in relation to the company; and

(b) a person shall not give a prescribed benefit to a prescribed person in connection with the transfer of the whole or any part of the undertaking or property of a company.

(2) Subsection (1) does not apply if particulars with respect to the prescribed benefit have been disclosed to the members of, and the giving of the proposed prescribed benefit has been approved in general meeting by:

(a) if neither paragraph (b) nor (c) applies—the company;

(b) if the company is a subsidiary of a listed company or listed companies—the company and the listed company or listed companies; or

(c) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company.

(3) The particulars to be disclosed for the purposes of subsection (2) include:

(a) if the proposed prescribed benefit is a payment:

(i) the amount of the payment; or

(ii) if that amount cannot be ascertained at the time of the disclosure—the manner in which that amount is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that amount; and

(b) otherwise:

(i) the money value of the proposed prescribed benefit; or

(ii) if that value cannot be ascertained at the time of the disclosure—the manner in which that value is to be

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calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that value.

(4) Where, because:

(a) the particulars required by subsection (1) to be disclosed to the members of a body corporate or bodies corporate in relation to the giving to a person of a proposed prescribed benefit have been so disclosed; and

(b) the giving to the person of the proposed prescribed benefit has been approved by the body corporate or bodies corporate in general meeting;

subsection (1) does not prohibit the giving to the person of the proposed prescribed benefit, that subsection does not prohibit the giving to the person, instead of the proposed prescribed benefit, of a prescribed benefit the amount or money value of which is less than the amount or money value of the proposed prescribed benefit.

(5) Paragraph (1)(a) does not apply in relation to:

(a) the giving of an exempt benefit; or

(b) the giving of a prescribed benefit in prescribed circumstances.

(6) Paragraph (1)(a) does not apply in relation to the giving of a prescribed benefit in connection with the retirement of a person from a prescribed office (in this subsection called the ***relevant office***) in relation to a company, if:

(a) the prescribed benefit is a genuine payment by way of pension or lump sum payment in respect of past services rendered by the person to the company or to a body corporate that is a related body corporate, or that was, when the past services were rendered, a related body corporate, of the company, including any superannuation, retiring allowance, superannuation gratuity or similar payment; and

(b) the value of the pension or lump sum payment, when added to the value of all other pensions (if any) and lump sum payments (if any) already paid or payable in connection with the retirement of the person from a prescribed office in

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relation to the company (including any pensions or payments to which subsection (5) applies), does not exceed:

(i) where, at the time when the person retired from the relevant office, the person was, and had been throughout a period (in this subsection called the ***relevant period***), or throughout periods totalling a period (in this subsection also called the ***relevant period***), of not less than 3 years, an eligible employee in relation to the company—the amount ascertained in accordance with the formula:

$$\frac{\mathbf{TE} \times \mathbf{RP}}{3};$$

where:

TE is the amount of the total emoluments of the person during the last 3 years of the relevant period; and

RP is the number of years in the relevant period or 7, whichever is the lesser number; or

(ii) otherwise—the total emoluments of the person during the period of 3 years ending when the person retired from the relevant office.

(7) In determining for the purposes of paragraph (6)(b) the value of a pension or lump sum payment, any part of the pension or lump sum payment that is attributable to a contribution made by the person or by a person other than:

(a) the company;

(b) a body corporate (in this subsection called a ***relevant body corporate***) that is a related body corporate of the company, or that was, when the contribution was made, such a related body corporate; or

(c) an associate of the company, or of a relevant body corporate, in respect of:

(i) the payment of the pension, or the making of the lump sum payment, as the case may be; or

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(ii) the making of the contribution;

shall be disregarded.

(8) For the purposes of subparagraph (6)(b)(i), where at a particular time, or throughout a particular period:

(a) a person was a genuine full-time employee of a company; or

(b) a person was a genuine full-time employee of a body corporate and the body corporate was related to a company;

the person shall be taken to have been at that time, or throughout that period, as the case may be, an eligible employee in relation to the company.

(9) Paragraph (1)(a) does not apply in relation to the giving of a prescribed benefit by a person to another person if failure by the first-mentioned person to give the prescribed benefit to the other person would constitute, otherwise than because of breach of contract or breach of trust, a contravention of a law in force in Australia or elsewhere.

(10) A prescribed person shall not receive a prescribed benefit if the giving of the prescribed benefit contravenes subsection (1).

(11) Where the giving of a prescribed benefit to a person contravenes subsection (1), then:

(a) if the benefit is a payment—the amount of the payment; or

(b) otherwise—the money value of the prescribed benefit;

shall be deemed to be received by the person in trust for the company concerned.

(12) Subsection (11) applies in relation to the whole of the amount of a payment or of the money value of a prescribed benefit notwithstanding that, if that amount or value had been less, the giving of the benefit would not have contravened subsection (1).

(13) This section is in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to the giving or receipt of a prescribed benefit.

(14) In this section:

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(a) a reference to the giving of a prescribed benefit by a person includes a reference to the giving of a prescribed benefit that the person is obliged under a contract to give;

(b) a reference to the giving of a prescribed benefit, or to a pension or lump sum payment paid or payable, in connection with the retirement of a person from an office is a reference to the giving of a prescribed benefit, or to a pension or lump sum paid or payable, as the case may be:

(i) by way of compensation for, or otherwise in connection with, the loss by the person of the office; or

(ii) in connection with the retirement of the person from the office;

(c) a reference to a payment includes a reference to a payment by way of damages for breach of contract; and

(d) a reference to retirement of a person from an office includes a reference to:

(i) loss by the person of the office;

(ii) resignation by the person from the office; or

(iii) death of the person at a time when the person holds the office.

(15) Without limiting the generality of paragraph (14)(b) where a person gives a prescribed benefit to another person for the purpose, or for purposes including the purpose, of enabling or assisting a person to give to a person a prescribed benefit in connection with the retirement of a person (in this subsection called the ***relevant person***) from an office, the first-mentioned person shall be taken, for the purposes of this section, to give the first-mentioned prescribed benefit in connection with the retirement of the relevant person from that office.

(16) Where a company, or an associate of a company, gives a prescribed benefit to a superannuation fund in prescribed circumstances, the superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

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(17) Where a prescribed superannuation fund in relation to a company gives a prescribed benefit to another superannuation fund in prescribed circumstances, the other superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

(18) For the purposes of this section, where:

(a) a company, or an associate of a company, gives a prescribed benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to the company; or

(b) a superannuation fund gives a prescribed benefit to another superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company;

the prescribed benefit first referred to in paragraph (a) or (b) shall be taken to be given in prescribed circumstances.

(19) In this section:

emoluments, in relation to a person who is a director or other officer of a body corporate, means the amount or value of any money, consideration or benefit given, directly or indirectly, to that person in connection with the management of affairs of the body corporate or of any holding company or subsidiary of the body corporate, whether as a director or officer or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the body corporate;

exempt benefit means a prescribed benefit given in connection with the retirement of a person from a prescribed office in relation to a company, being a prescribed benefit:

(a) given under an agreement entered into before the commencement of this Part where the giving of the prescribed benefit would have been lawful if this Law had not been in force;

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(b) given under an agreement where particulars of the terms of that agreement have been disclosed to the members of the company and approved by the company in general meeting;
(c) that is a genuine payment by way of damages for breach of contract;
(d) given to the person under an agreement made between the company and the person before the person became the holder of the prescribed office as the consideration or part of the consideration for the person agreeing to hold the prescribed office; or
(e) that is a payment made in respect of leave of absence to which the person is entitled under an industrial instrument;

give, in relation to a prescribed benefit, includes:
(a) in the case of a prescribed benefit that is a payment—make; and
(b) in the case of a prescribed benefit that is an interest in property—transfer;

person includes a superannuation fund;

prescribed benefit means a payment or other valuable consideration or any other benefit and includes, without limiting the generality of the foregoing, an interest in property of any kind;

prescribed office, in relation to a company, means:
(a) an office of director of the company or of a related body corporate;
(b) the office of principal executive officer of the company or of a related body corporate; and
(c) any other office in connection with the management of affairs of the company or of a related body corporate that is held by a person who also holds, or who has, at any time within the 12 months immediately before the loss of, or retirement from, that office, held, an office mentioned in paragraph (a) or (b);

prescribed person, in relation to a company, means:

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(a) a person who holds, or has at any previous time held, a prescribed office in relation to the company;
(b) the spouse of a person referred to in paragraph (a);
(c) a person who is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
(d) an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;

relevant benefit, in relation to a proposal to give a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company, being a prescribed benefit in relation to which paragraph (1)(a) would apply, means any other prescribed benefit (including an exempt benefit) given, or proposed to be given, in connection with the retirement of the person from the prescribed office;

superannuation fund means a provident, benefit, superannuation or retirement fund.

(20) The giving of approval by a body corporate for the giving of a prescribed benefit as mentioned in paragraph (1)(b) does not relieve a director of the body corporate of any duty to the body corporate under section 232 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the prescribed benefit.

238 Assignment of office

(1) If, in the case of a public company, provision is made by the articles or by an agreement entered into between any person and the company for empowering a director of the company to assign his or her office as such to another person, any such assignment of office does not have any effect, notwithstanding anything in the provision of the articles or agreement, until approved by a special resolution of the company.

(2) This section does not prevent the appointment by a director (if authorised by the articles and subject to the articles) of an alternate

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or substitute director to act for or on behalf of the director during his or her inability for any time to act as director.

239 Powers to require disclosure of directors' emoluments

If a company is served with a notice sent by or on behalf of:

(a) at least 10% of the total number of members; or

(b) members who together hold not less than 5% in nominal value of the company's issued share capital;

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company shall:

(c) as soon as practicable prepare and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary, including any amount paid by way of salary, for the financial year that ended immediately before the service of the notice;

(d) as soon as practicable after the statement has been audited, send a copy of the statement to each person entitled to receive notice of general meetings of the company; and

(e) lay the statement before the next general meeting of the company held after the statement is audited.

240 Secretary

(1) A company shall have at least one secretary.

(2) A secretary of a company shall be appointed by the directors.

(3) A person is not capable of being a secretary of a company unless the person is a natural person who has attained the age of 18 years.

(4) The secretary, or each of the secretaries, shall be a person who ordinarily resides in Australia.

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(5) A secretary shall be present at the registered office of the company in person or by an agent on the days and during the hours when the registered office is required to be open and accessible to the public.

(6) If there is no secretary of a company, or no secretary of the company is capable of acting, any act or thing required or authorised to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary, or no assistant or deputy secretary is capable of acting, by or in relation to an officer of the company authorised by the directors to act as secretary, either generally or in relation to the doing of that act or thing.

(7) A provision of this Law or of the memorandum or articles requiring or authorising any act or thing to be done by or in relation to a director and a secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, a secretary.

(8) Where a preceding provision of this section is contravened, the company and any officer of the company who is involved in the contravention each contravene this subsection.

241 Provisions indemnifying officers or auditors

(1) Any provisions, whether contained in the articles or in a contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying such an officer or auditor against, any liability that by law would otherwise attach to the officer or auditor in respect of any negligence, default, breach of duty or breach of trust of which the officer or auditor may be guilty in relation to the company is void.

(2) Notwithstanding anything in this section, a company may, pursuant to its articles or otherwise, indemnify an officer or auditor against any liability incurred by the officer or auditor:

(a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or auditor or in which the officer or auditor is acquitted; or

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(b) in connection with any application in relation to any such proceedings in which relief is granted under this Law to the officer or auditor by the Court.

(3) Subsection (1) does not apply in relation to a contract of insurance, other than a contract of insurance the premiums in respect of which are paid by the company or by a related body corporate.

(4) In this section:

officer, in relation to a company, means:

(a) a director, secretary, executive officer or employee of the company;
(b) a receiver, or receiver and manager, of property of the company;
(c) an official manager or deputy official manager of the company;
(d) a liquidator of the company; and
(e) a trustee or other person administering a compromise or arrangement made between the company and another person or other persons.

242 Register of directors, principal executive officers and secretaries

(1) A company shall keep a register of its directors, its principal executive officer and its secretaries.

(2) The register shall contain with respect to each director his or her consent in writing to appointment as such and shall specify:

(a) the present Christian or given name and surname, any former Christian or given name or surname, the date and place of birth, the usual residential address, and the business occupation (if any), of the director; and
(b) particulars of directorships held by the director in other bodies corporate that under this Law or the law of any State or Territory are public companies or subsidiaries of public companies;

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but it is not necessary for the register to contain particulars of directorships held by a director of a body corporate in a related body corporate.

(3) Where a person is a director in one or more subsidiaries of the same holding company, it is sufficient compliance with the provisions of subsection (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register shall specify with respect to the principal executive officer and each secretary his or her full name, date and place of birth, address and other occupation (if any) and shall contain his or her consent in writing to appointment as principal executive officer or secretary, as the case may be.

(5) The register shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(6) A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to the person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.

(7) The company shall lodge:

(a) within one month after incorporation, or registration under this Act—a return in the prescribed form containing the particulars required to be specified in the register;

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(b) within one month after a person ceases to be, or is appointed, a director of the company—a return in the prescribed form notifying the Commission of the change and containing, with respect to each person who is, at the time of lodgment of the return, a director of the company, the particulars required to be specified in the register;

(c) within one month after a person is appointed the principal executive officer, or a secretary, of the company—a return in the prescribed form notifying the Commission of that fact and specifying the full name, date and place of birth, address and other occupation (if any) of that person; and

(d) within one month after a person ceases to be the principal executive officer, or a secretary, of the company—a return in the prescribed form notifying the Commission of that fact.

(7A) Paragraph (7)(a) does not apply to a company that has, before the commencement of this section, lodged a return with the NCSC for the purposes of a previous law corresponding to that paragraph.

(8) The Commission may at any time, by written notice to a person who appears to the Commission from returns lodged with the Commission under this section or section 335 to be a director, the principal executive officer or a secretary of a company, require the person to lodge with the Commission, within a period specified in the notice, a notice in the prescribed form stating whether the person is such a director, principal executive officer or secretary and, if the person has ceased to be such a director, principal executive officer or secretary, specifying the date on which the person so ceased, and, where a person receives such a notice, the person shall comply with the notice.

(9) A certificate of the Commission stating that, from any return or notice lodged with the Commission under this section or section 335, or from any return or notice in the possession of the Commission that was lodged with another authority under a previous corresponding law, it appears that at any time specified in the certificate, or throughout a period specified in the certificate, a person was a director, the principal executive officer or a secretary of a specified company shall, in all courts and by all persons

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having power to take evidence for the purposes of this Law, be received as *prima facie* evidence of the facts stated in the certificate.

(10) For the purposes of subsection (9), a person who appears from any return or notice lodged with or in the possession of the Commission to be a director, the principal executive officer or a secretary of a company shall be deemed to continue as such until, from a return or notice subsequently lodged with or coming into the possession of the Commission, it appears that the person has ceased to be such a director, principal executive officer or secretary.

(11) In this section:

appointed includes re-appointed.

243 Register of disqualified company directors and other officers

(1) The Commission shall cause to be kept for the purposes of this Act a Register of Disqualified Company Directors and Other Officers consisting of:

- (a) a copy of each order made under subsection 230(1) or 599(2); and
- (b) a copy of each notice served under subsection 600(3).

(2) Where:

- (a) an order has been made under a previous law that corresponds with subsection 230(1) or 599(2); or
- (b) a notice has been served under a previous law that corresponds with subsection 600(3);

the Commission may include a copy of the order or notice in the Register of Disqualified Company Directors and Other Officers.

(3) A person may inspect and make copies of, or take extracts from, the Register of Disqualified Company Directors and Other Officers.

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Part 3.3—Meetings and Proceedings

244 Statutory meeting and statutory report

(1) Where a public company that is a limited company and has a share capital or a no liability company:

(a) issues a prospectus inviting applications or offers from the public to subscribe for, or offering to the public for subscription, shares in the company; and

(b) the company has not previously issued such a prospectus;

the company shall, within a period of not less than 1 month and not more than 3 months after the day on which the company allots shares pursuant to the prospectus, hold a general meeting of the members of the company, to be called the ***statutory meeting***.

(2) The directors shall at least 7 days before the day on which the meeting is to be held send a copy of a report, to be called the ***statutory report***, to every member of the company.

(3) The statutory report shall be certified by not less than 2 directors of the company and shall state, as at the date of the report:

(a) the total number of shares allotted, distinguishing:

(i) shares allotted as fully paid up in cash;

(ii) shares allotted as partly paid up in cash;

(iii) shares allotted as fully paid up otherwise than in cash; and

(iv) shares allotted as partly paid up otherwise than in cash;

and stating:

(v) in the case of shares partly paid up—the extent to which they are so paid up; and

(vi) in the case of shares allotted as fully or partly paid up otherwise than in cash—the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

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(c) an abstract of the receipts of the company and of the payments made out of those receipts up to a day within 7 days of the date of the report showing under distinctive headings:
   (i) the receipts from shares and debentures and other sources;
   (ii) the payments made out of those receipts;
   (iii) particulars concerning the balance (if any) remaining in hand; and
   (iv) an account or estimate of the preliminary expenses;

(d) the name, address and description of:
   (i) each director;
   (ii) each trustee for holders of debentures (if any);
   (iii) each auditor;
   (iv) each secretary; and
   (v) the principal executive officer;

   of the company; and

(e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of such shares and to the receipts and payments on capital account, be examined and reported upon by the auditors (if any).

(5) The directors shall cause a copy of the statutory report and the auditor's report (if any) to be lodged at least 7 days before the day of the statutory meeting.

(6) The directors shall cause a list showing the names and addresses of the members, and the numbers of shares held by them respectively, to be produced at the beginning of the meeting and to remain open and accessible to any member throughout the meeting.

(7) The members present at the meeting may discuss any matter relating to the formation of the company or arising out of the

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statutory report, whether previous notice has been given or not, but a resolution may only be passed if notice of it has been given in accordance with the articles.

(8) The meeting may adjourn from time to time and, at any adjourned meeting, any resolution of which notice has been given in accordance with the articles either before or after the former meeting may be passed and the adjourned meeting has the same powers as an original meeting.

(9) The meeting may by resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Act, at least 7 days notice of intention to propose the resolution has been given to every member of the company.

(10) If default is made in complying with this section:

(a) the company; and

(b) any officer of the company who failed to take reasonable steps to ensure compliance;

each contravene this subsection.

245 Annual general meeting

(1) Subject to subsection (2), a company shall, in addition to any other meeting held by the company, hold a general meeting, to be called the ***annual general meeting***, at least once in every calendar year and, in relation to a financial year of the company that ends after the commencement of this Law, within 5 months, or, in the case of an exempt proprietary company, within 6 months, after the end of that financial year.

(2) A company may hold its first annual general meeting within 18 months after its incorporation but, if the first financial year of the company ends after the commencement of this Law, the company shall hold the meeting not more than 5 months (or, in the case of an exempt proprietary company, not more than 6 months) after the end of that financial year.

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(3) A company shall be deemed to have held an annual general meeting if that company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but nothing in this subsection affects an obligation imposed by this Law to hold an annual general meeting at a particular time or within a particular period.

(4) An exempt proprietary company shall be deemed to have held an annual general meeting if that company is deemed by section 255 to have held a general meeting and the resolution that is deemed to have been passed at that general meeting deals with all matters that are required to be dealt with at an annual general meeting.

(5) On application made by a company in accordance with a resolution of the directors and signed by a director or secretary, the Commission may, in writing and subject to such conditions as the Commission imposes on the company:
   (a) permit the company to hold a meeting in a calendar year other than the one in which subsection (1) requires the meeting to be held; or
   (b) extend the period within which subsection (1) or (2) requires the company to hold a meeting.

(6) A company shall comply with conditions imposed on it under subsection (5).

(7) A permission or extension in force under subsection (5) has effect accordingly.

(8) An application by a company for a permission or extension under subsection (5) shall be made before the end of the calendar year in which, or of the period within which, as the case may be, subsection (1) or (2) would otherwise require the company to hold the meeting.

(9) So long as proper notice is given to everyone entitled to receive notice of the meeting, a general meeting may be held at any time

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and the company may resolve that any meeting held or convened to be held shall be the annual general meeting of the company.

(10) If default is made in holding a meeting under this section or in complying with a condition imposed under subsection (5) the Court may, on the application of a member, order a general meeting to be convened.

246 Convening of general meeting on requisition

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition in writing of:

(a) in the case of a company having a share capital—at least 100 members holding shares in the company on which there has been paid up an average sum, per member, of at least $200;

(b) in the case of a company not having a share capital—at least 200 members; or

(c) in either case—a member who is entitled, or members who are together entitled, to at least 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings;

as soon as practicable convene a general meeting of the company to be held as soon as practicable but, in any case, not later than 2 months after the date of the deposit of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitioning member or members and deposited at the registered office of the company, and, where there are 2 or more requisitioning members, may consist of several documents in like form each signed by 1 or more of the requisitioning members.

(3) If the directors do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitioning member, or, where there are 2 or more requisitioning members, those members or any of them representing more than 50% of the total voting rights of all of them:

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(a) may, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting; and

(b) for the purposes of convening a meeting as provided by paragraph (a), may request the company to supply a written statement setting out the names and addresses (so far as they are known to the company) of the persons who, at the date of the deposit of the requisition, were entitled, under subsection 247(4) or a provision of the articles of the company, to receive notice of general meetings of the company.

(4) Where a request for a statement is made to a company under paragraph (3)(b), the directors of the company shall send the statement to the person or persons who requested the statement within 7 days after the day on which the request is made.

(5) A meeting convened by a requisitioning member or requisitioning members in accordance with subsection (3) shall not be held more than 3 months after the date of the deposit of the requisition.

(6) Any reasonable expenses incurred by the requisitioning member or members by reason of the failure of the directors to convene a meeting shall be paid to that member or those members by the company, and any sum so paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

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

(8) For the purposes of the application of this section in relation to a Division 2 company:

(a) a reference in this section to a requisition includes a reference to a requisition deposited before the commencement of this

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Law in accordance with a previous law in force at that time that corresponds to this section; and

(b) where a requisition was so deposited—anything done at such a time, under a previous law corresponding to this section, pursuant to the requisition shall also be deemed to have been done at that time under this section.

247 Convening of meetings

(1) So far as the articles do not make other provision, 2 or more members holding at least 5% of the issued share capital, or, if the company does not have a share capital, at least 5% in number of the members of the company, may convene a meeting of the company.

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be convened by notice in writing of at least 14 days or such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is convened by notice shorter than is required by subsection (2), be deemed to be duly convened if it is so agreed:

(a) in the case of a meeting convened as the annual general meeting—by all the members entitled to attend and vote at the meeting; or

(b) in the case of any other meeting—by a majority in number of the members having a right to attend and vote at the meeting, being a majority that together hold at least 95% in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, are together entitled to at least 95% of the total voting rights of all the members having the right to attend and vote at the meeting.

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

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248 Articles as to right to demand a poll

(1) Any provision contained in a company's articles is void in so far as it would have the effect:

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

(b) of making ineffective a demand for a poll on any question or matter, other than the election of the chairman of the meeting or the adjournment of the meeting, that is made:

(i) by at least 5 members having the right to vote at the meeting;

(ii) by a member or members who are together entitled to at least 10% of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to at least 10% of the total sum paid up on all the shares conferring that right; or

(c) of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

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

249 Quorum, chairman, voting etc. at meetings

(1) So far as the articles do not make other provision:

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(a) in the case of a proprietary company, 2 members of the company, and in the case of any other company, 3 members, personally present constitute a quorum;

(b) any member elected by the members present at a meeting may be chairman of the meeting; and

(c) in the case of a company having a share capital, every member has 1 vote in respect of each share or each $20 of stock held by the member, and, in any other case, every member has 1 vote.

(2) On a poll taken at a meeting, a person (including a proxy) entitled to 2 or more votes need not, if the person votes, use all the person's votes or cast in the same way all the votes the person uses.

(3) A body corporate may, by resolution of its board, authorise a specified person to act as the body's representative at specified meetings that the body would, if it were a natural person, be entitled to attend as a member or creditor (including debenture holder) of a company.

(4) A person who is authorised under subsection (3) is, in accordance with the authority and until it is revoked, entitled to exercise on the body's behalf the same powers as the body could, if it were a natural person, exercise as a member or creditor (including debenture holder) of the company.

(5) Where:

(a) a person present at a meeting is authorised to act as the representative of a body corporate at the meeting by virtue of an authority given by the body corporate under subsection (3); and

(b) the person is not otherwise entitled to be present at the meeting, the body corporate shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

(6) A certificate under the seal of the body corporate is *prima facie* evidence of the appointment or of the revocation of the

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appointment, as the case may be, of a representative pursuant to the provisions of subsection (3).

(7) Where a holding company holds the whole of the issued shares in a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (3) stating that any act, matter or thing, or any ordinary or special resolution, required by this Law or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at a general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at a general meeting of the subsidiary.

(8) Where:

(a) by or under any provision of this Law any notice, copy of a resolution or other document relating to any matter is required to be lodged by the company;

(b) a minute referred to in subsection (7) is signed by the representative pursuant to that subsection; and

(c) the minute relates to such a matter;

the company shall, within 1 month after the signing of the minute, lodge a copy of the minute.

250 Proxies

(1) Subject to subsections (2), (3) and (4), a member of a company who is entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint:

(a) in the case of a company not having a share capital—another member or, where the articles so provide, another person (whether a member or not); or

(b) in any other case—not more than 2 other persons (whether members or not);

as the first-mentioned member's proxy or proxies to attend and vote instead of the member at the meeting.

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The Corporations Law—Section 250

(2) A proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

(3) Where a member appoints 2 proxies, the appointment is of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.

(4) A member of a proprietary company is not entitled to appoint another person as the member's proxy under subsection (1) except:
- (a) in accordance with the articles of the company; or
- (b) with the leave of the Court.

(5) In every notice convening a meeting of a public company or of any class of members of a public company, there shall appear with reasonable prominence:
- (a) in the case of a public company having a share capital, a statement:
  - (i) that a member entitled to attend and vote is entitled to appoint not more than 2 proxies;
  - (ii) that where more than 1 proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights; and
  - (iii) that a proxy need not be a member; or
- (b) in the case of a public company not having a share capital, a statement:
  - (i) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member; and
  - (ii) that a proxy must, or need not, be a member (as the case requires).

(6) If subsection (5) is contravened, an officer of the company who is involved in the contravention contravenes this subsection.

(7) A person shall not authorise or permit an invitation to appoint as proxy a person or 1 of a number of persons specified in the

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invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy.

(8) A person does not contravene subsection (7) merely because of the issue to a member at the member's request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

251 Power of Court to order meeting

(1) If for any reason it is impracticable to convene a meeting in any manner in which meetings may be convened or to conduct the meeting in the manner prescribed by the articles or this Law, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting, order a meeting to be convened, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that 1 member present in person or by proxy shall be deemed to constitute a meeting.

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

(3) For the purposes of an application to the Court or of a meeting held by order of the Court under this section, the personal representative of a dead member of a company shall be deemed to be a member of the company and, notwithstanding anything to the contrary in this Law or the memorandum or articles of the company, to have the same voting rights as the dead member had immediately before his or her death by reason of his or her holding shares that on his or her death were transmitted to his or her personal representative by operation of law.

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The Corporations Law—Section 252

252 Circulation of members' resolutions etc.

(1) Subject to this section, a company shall, on the requisition in writing of:

(a) in the case of a company having a share capital—at least 100 members holding shares in the company on which there has been paid up an average sum, per member, of at least $200;

(b) in the case of a company not having a share capital—at least 200 members; or

(c) in either case—a member who is entitled, or members who are together entitled, to at least 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings;

and, unless the company otherwise resolves, at the expense of the requisitioning member or members:

(d) give to members of the company entitled to have notice of the next annual general meeting sent to them notice of any resolution that may properly be moved and is intended to be moved at that meeting; and

(e) circulate to members of the company entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) Notice of a resolution referred to in subsection (1) shall be given to each member of the company:

(a) in the case of a member entitled to have notice of the meeting sent to him, her or it—by serving a copy of the resolution on the member in any manner permitted for service on the member of notice of the meeting; and

(b) in the case of any other member—by giving notice of the general effect of the resolution in any manner permitted for giving the member notice of meetings of the company.

(3) A statement referred to in subsection (1) shall be circulated, to each member of the company entitled to have notice of the meeting sent to him, her or it, by serving a copy of the statement on the member

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in any manner permitted for service on the member of notice of the meeting.

(4) A copy or notice that subsection (2) or (3) requires to be served or given shall be served or given in the same manner and, so far as practicable, at the same time as notice of the meeting and, if it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable after that time.

(5) A company is not bound under this section to give notice of any resolution or to circulate any statement unless:

(a) a copy of the requisition signed by the requisitioning member or members (or, where there are 2 or more requisitioning members, 2 or more copies that between them contain the signatures of all the requisitioning members) is deposited at the registered office of the company:

(i) in the case of a requisition requiring notice of a resolution—not less than 6 weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to the requisition;

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes of this section.

(6) A company is not bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court 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 costs of the company or of the other person on an application under this section to be paid in whole or in part by the

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requisitioning member or members, notwithstanding that they are not parties to the application.

(7) Despite anything in the company's articles, the business that may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section, and, for the purposes of this subsection, notice shall be deemed to have been so given notwithstanding the accidental omission to give notice to a member or members.

(8) If default is made in complying with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

253 Special resolutions

(1) A resolution is a special resolution of a company if:

(a) it is passed at a meeting of the company, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(2) A resolution is a special resolution of the holders of shares in a company included in a class of shares if:

(a) it is passed at a meeting of the holders of shares included in that class of shares, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such holders of shares included in that class of shares as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

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(3) A resolution is a special resolution of the members of a company included in a class of members if:

(a) it is passed at a meeting of members included in that class of members, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such members included in that class of members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(4) Notwithstanding the provisions of subsection (1), (2) or (3), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority that together hold at least 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represent at least 95% of the total voting rights of all members having the right to attend and vote at the meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days notice has been given.

(5) At a meeting at which a special resolution is submitted, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(6) At any meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded:

(a) if the articles make provision permitting a specified number of members for the time being entitled under the articles to vote at the meeting to demand a poll:

(i) where the number specified does not exceed 5—by that number of members so entitled; or

(ii) in any other case—by 5 members so entitled; or

(b) if no such provision is made by the articles—by 3 members entitled to vote at the meeting, or by 1 member or 2 members

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so entitled if that member holds or those 2 members together hold not less than 10% in nominal value of the shares giving the right to attend and vote at the meeting or, where the company does not have a share capital, if that member is entitled, or those 2 members together are entitled, to not less than 10% of the total voting rights of all members having the right to attend and vote at the meeting.

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

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

(9) Where, in the case of a company incorporated before the commencement of this section, any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

254 Resolution requiring special notice

(1) Where by this Law special notice is required of a resolution to be put at a meeting of a company, the resolution is not effective unless notice of the intention to move the resolution has been given to the company at least 28 days before the meeting at which it is moved, but if, after notice of the intention to move such a resolution has been given to the company, a meeting is convened for a day 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

(2) The company shall give persons entitled to be given notice of a meeting of the company notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if

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that is not practicable, shall give them notice of the resolution in any manner allowed by the articles not less than 14 days before the meeting.

255 Resolutions of exempt proprietary companies

(1) If all the members of an exempt proprietary company have signed a document containing a statement that they are in favour of a prescribed resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a general meeting of the company held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member and, where a document is so signed:

(a) the company shall be deemed to have held a general meeting at that time on that day; and

(b) the document shall be deemed to constitute a minute of that meeting.

(2) Subsection (1) does not apply in relation to a document unless the document has been signed by each person who was a member of the company at the time when the document was last signed.

(3) For the purposes of this section:

(a) 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members shall together be deemed to constitute 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents; and

(b) a prescribed resolution is a resolution that is required or permitted by this Law or the memorandum or articles to be passed at a general meeting of a company and includes a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing but does not include a resolution of which special notice is required or that is

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required to be passed by a majority other than a simple majority.

(4) Any document that is attached to a document signed as mentioned in subsection (1) and is signed by the member or members who signed the last-mentioned document shall, for the purposes of this Law, be deemed to have been laid before the company at the general meeting referred to in that subsection.

(5) Nothing in this section affects or limits any rule of law relating to the effectiveness of the assent of members of a company given to a document, or to any act, matter or thing, otherwise than at a general meeting of the company.

256 Lodgment etc. of copies of certain resolutions and agreements

(1) A printed copy of:

(a) each special resolution;

(b) each resolution or agreement that binds a class of shareholders, whether or not agreed to by all the members of that class; and

(c) each document or resolution that attaches rights to shares (whether or not in substitution for other rights) and is not otherwise required to be lodged under this Law;

shall, except where otherwise expressly provided by this Law, within 1 month after the passing of the resolution or the making of the agreement or document, be lodged by the company.

(2) Subsection (1) does not apply in relation to a Table A proprietary company in relation to a resolution, agreement or document unless it affects the company's articles in relation to the company's status as a proprietary company.

(3) Where articles have not been registered, a member may request the company to furnish him, her or it with a printed copy of any resolution, document or agreement to which subsection (1) applies, or would but for subsection (2) apply, and, where such a request is made, the company shall send the copy to that person:

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(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

257 Resolutions at adjourned meetings

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

258 Minutes of proceedings

(1) A company shall:

(a) cause minutes of all proceedings of general meetings and of meetings of its directors to be entered, within 1 month after the relevant meeting is held, in books kept for that purpose; and

(b) except in the case of documents that are deemed to constitute minutes by virtue of section 255, cause those minutes to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

(2) Any minute that is so entered and, in a case to which paragraph (1)(b) applies, purports to be signed as provided by that paragraph is *prima facie* evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and, in a case to which paragraph (1)(b) applies, signed, then, unless the contrary is proved:

(a) the meeting shall be deemed to have been duly held and convened;

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(b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and

(c) all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

259 Inspection of minute books

(1) A company shall keep the books containing the minutes of proceedings of any general meeting, or of a meeting of the directors, at its registered office, at its principal place of business in Australia, or at such other place in Australia as is approved by the Commission and, in the case of the books containing the minutes of proceedings of general meetings, shall ensure that they are open for inspection by any member without charge.

(2) A member of a company may request the company in writing to furnish him, her or it with a copy of any minutes of a general meeting and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in the case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

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Part 3.4—Oppressive conduct of affairs

260 Remedy in cases of oppression or injustice

(1) An application to the Court for an order under this section in relation to a company may be made:

(a) by a member who believes:

(i) that affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is contrary to the interests of the members as a whole; or

(ii) that an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole; or

(b) by the Commission, in a case where it has investigated, under Division 1 of Part 3 of the ASC Law:

(i) matters being, or connected with, affairs of the company; or

(ii) matters including such matters.

(2) If the Court is of the opinion:

(a) that affairs of a company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section called the ***oppressed member or members***) or in a manner that is contrary to the interests of the members as a whole; or

(b) that an act or omission, or a proposed act or omission, by or on behalf of a company, or a resolution, or a proposed resolution, of a class of members of a company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section

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also called the ***oppressed member or members***) or was or would be contrary to the interests of the members as a whole;

the Court may, subject to subsection (4), make such order or orders as it thinks fit, including, but not limited to, one or more of the following:

(c) an order that the company be wound up;

(d) an order for regulating the conduct of affairs of the company in the future;

(e) an order for the purchase of the shares of any member by other members;

(f) an order for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;

(g) an order directing the company to institute, prosecute, defend or discontinue specified proceedings, or authorising a member or members of the company to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;

(h) an order appointing a receiver or a receiver and manager of property of the company;

(j) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;

(k) an order requiring a person to do a specified act or thing.

(3) A person shall not contravene an order made under subsection (2) that is applicable to the person.

(4) The Court shall not make an order under subsection (2) for the winding up of a company if it is of the opinion that the winding up of the company would unfairly prejudice the oppressed member or members.

(5) In this section and in paragraphs 461(1)(f), (g) and (h):

(a) a reference to a member, in relation to a company, includes, in the case of a company limited by shares, or a company limited both by shares and by guarantee, a reference to a

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person to whom a share in the company has been transmitted by will or by operation of law;

(b) a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in his capacity as a member or in any other capacity; and

(c) a reference to an act or omission by or on behalf of a company or a resolution of a class of members of a company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to an act or omission by or on behalf of a company or a resolution of a class of members of a company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in the person's capacity as a member or in any other capacity.

(6) Where an order that a company be wound up is made under this section, the provisions of this Law relating to the winding up of companies apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the Court by the company.

(7) Where an order under this section makes any alteration in or addition to the constitution of a company, then, despite anything else in this Law but subject to the order:

(a) the company does not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum and articles inconsistent with the provisions of the order; and

(b) subject to this subsection, the alteration has effect as if it has been duly made by resolution of the company.

(8) An office copy of any order made under this section pursuant to an application by a member of the company shall be lodged by the

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applicant with the Commission within 14 days after the making of the order.

(9) If default is made in complying with subsection (8), the applicant is guilty of an offence.

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Part 3.5—Charges

Division 1—Preliminary

261 Interpretation and application

(1) In this Part, unless the contrary intention appears:

company includes a registered body other than a registrable body;

document of title means a document:

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or

(b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land;

and includes:

(c) a bill of lading;

(d) a warehousekeeper's certificate;

(e) a wharfinger's certificate;

(f) a warrant or order for the delivery of goods; and

(g) a document that is, or evidences title to, a marketable security;

present liability, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;

property, in relation to a company, means property:

(a) in the case of a registrable Australian body—within this jurisdiction; or

(b) in the case of a foreign company—within Australia or an external Territory; or

(c) otherwise—within or outside Australia;

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held by the company, whether or not as trustee;

prospective liability, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;

Register means the Australian Register of Company Charges referred to in section 265;

registrable charge means a charge in relation to which, by virtue of section 262, the provisions of this Part mentioned in subsection 262(1) apply.

(2) A charge referred to in subsection 263(3) or section 264 shall, until the charge is registered, be treated for the purposes of this Part as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

(3) The registration of a charge referred to in subsection 263(3) or section 264 does not prejudice any priority that would have been accorded to the charge under any other law (whether an Australian law or not) if the charge had not been registered.

(4) For the purposes of this Part, a notice or other document shall be taken to be lodged when it is received at an office of the Commission (in this jurisdiction or elsewhere) by an officer authorised to receive it.

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Division 2—Registration

262 Charges required to be registered

(1) Subject to this section, the provisions of this Part relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply in relation to the following charges (whether legal or equitable) on property of a company and do not apply in relation to any other charges:

(a) a floating charge on the whole or a part of the property, business or undertaking of the company;

(b) a charge on uncalled share capital or uncalled share premiums;

(c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;

(d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under an Australian law relating to title to ships;

(e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;

(f) a charge on a book debt;

(g) a charge on a marketable security, not being:

(i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or

(ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee;

(h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;

(j) a charge on a negotiable instrument other than a marketable security.

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(2) The provisions of this Part mentioned in subsection (1) do not apply in relation to:

(a) a charge, or a lien over property, arising by operation of law;

(b) a pledge of a personal chattel or of a marketable security;

(c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;

(d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or

(e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

(3) The reference in paragraph (1)(d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on:

(a) a document evidencing title to land;

(b) a chattel interest in land;

(c) a marketable security;

(d) a document evidencing a thing in action; or

(e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

(4) The reference in paragraph (1)(f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the company at some future time on account of or in connection with a profession, trade or business carried on by the company, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, on a negotiable

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instrument or on a debt owing in respect of a mortgage, charge or lease of land.

(5) The reference in paragraph (1)(h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under a prescribed law of a State or Territory.

(6) For the purposes of this section, a company shall be deemed to have deposited a document of title to property with another person (in this subsection referred to as the ***chargee***) in a case where the document of title is not in the possession of the company if:

(a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or

(b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

(7) For the purposes of this section, a charge shall be taken to be a charge on property of a kind to which a particular paragraph of subsection (1) applies even though the instrument of charge also charges other property of the company including other property that is of a kind to which none of the paragraphs of that subsection applies.

(8) The provisions of this Part mentioned in subsection (1) do not apply in relation to a charge on land.

(9) The provisions of this Part mentioned in subsection (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

(10) The provisions of this Part mentioned in subsection (1) do not apply in relation to a charge created by a company in its capacity as legal personal representative of a deceased person or as trustee of the estate of a deceased person.

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(11) A charge on property of a company is not invalid merely because of the failure to lodge with the Commission, or give to the company or another person, a notice or other document that is required by this Division to be so lodged or given.

263 Lodgment of notice of charge and copy of instrument

(1) Where a company creates a charge, the company shall ensure that there is lodged, within 45 days after the creation of the charge:

(a) a notice in the prescribed form setting out the following particulars:

(i) the name of the company and the date of the creation of the charge;

(ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;

(iii) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;

(iv) a short description of the liability (whether present or prospective) secured by the charge;

(v) a short description of the property charged;

(vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;

(vii) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for debenture holders;

(viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders—the name of the chargee;

(ix) such other information as is prescribed;

(b) if, pursuant to a resolution or resolutions passed by the company, the company issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the

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charge is evidenced only by the resolution or resolutions and the debentures—a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture; and

(c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument or instruments:

(i) the instrument or each of the instruments; or

(ii) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

(2) In a case to which paragraph (1)(b) applies:

(a) the charge shall, for the purposes of subsection (1), be deemed to be created when the first debenture in the series of debentures is issued; and

(b) if, after the issue of the first debenture in the series, the company passes a further resolution authorising the issue of debentures in the series, the company shall ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.

(3) A body that applies for registration as a company under Division 3 of Part 2.2, or for registration under Part 4.1, shall lodge with the application for registration the documents specified in subsection (4) in relation to any charge on property of the body that would be registrable under this Division if the body were a Division 3 company, or a registered body, as the case may be.

(4) The documents required to be lodged under subsection (3) in relation to a charge on property of a body are the following documents:

(a) a notice in the prescribed form:

(i) setting out the name of the body;

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(ii) if the charge was created by the body—specifying the date of the creation of the charge;

(iii) if the charge was a charge existing on property acquired by the body—setting out the date on which the property was so acquired; and

(iv) otherwise complying with the requirements of paragraph (1)(a);

(b) if the charge was created or evidenced as mentioned in paragraph (1)(b):

(i) in the case of a charge created by the body—a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph and a statement in writing verifying the execution of that first debenture; or

(ii) in the case of a charge that existed on property acquired by the body—the copies referred to in subparagraph (i) verified by statements in writing to be true copies;

(c) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph (1)(b)):

(i) in the case of a charge created by the body:

(A) the instrument or each of the instruments; or

(B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments; or

(ii) in the case of a charge that existed on property acquired by the body—a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy;

(d) if the charge was created or evidenced as mentioned in paragraph (1)(b) and, after the issue of the first debenture in the series, the body passed a further resolution or resolutions authorising the issue of debentures in the series—a copy of

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that resolution or of each of those resolutions verified by a statement in writing to be a true copy.

(5) A notice in relation to a charge, being a charge in relation to which paragraph (1)(b) or (c) or (4)(b) or (c) applies, shall not be taken to have been lodged under subsection (1) or (3) unless the notice is accompanied by the documents specified in that paragraph.

(6) Where a notice with respect to an instrument creating a charge has been lodged under subsection (1) or (3), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, sections 279 to 282(inclusive) have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

(7) Where a payment or discount has been made or allowed, either directly or indirectly, by a company or registrable body to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under subsection (1) or (3) shall include particulars as to the amount or rate per centum of the payment or discount.

(8) Where a company or registrable body issues debentures as security for a debt of the company or registrable body, the company or registrable body shall not thereby be regarded, for the purposes of subsection (7), as having allowed a discount in respect of the debentures.

264 Acquisition of property subject to charge

(1) Where a company acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a company, the company shall, within 45 days after the acquisition of the property:

(a) ensure that there is lodged:

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(i) a notice in the prescribed form in relation to the charge, setting out the name of the company and the date on which the property was so acquired and otherwise complying with the requirements of paragraph 263(1)(a);

(ii) if the charge was created or evidenced as mentioned in paragraph 263(1)(a)—a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy; and

(iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph 263(1)(b)):

(A) the instrument or each of the instruments; or

(B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and

(b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) A notice in relation to a charge, being a charge in relation to which subparagraph (1)(a)(ii) or (iii) applies, shall not be taken to have been lodged under subsection (1) unless it is accompanied by the documents specified in that subparagraph.

265 Registration of documents relating to charges

(1) The Commission shall keep a register to be known as the Australian Register of Company Charges.

(2) Where a notice in respect of a charge on property of a company that is required by section 263 or 264 to be lodged is lodged (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required by the relevant section to be included in the notice, the Commission shall as soon as practicable cause to be entered in the

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Register the time and date when the notice was lodged and the following particulars in relation to the charge:

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

(3) Subject to subsection (9), where particulars in respect of a charge are entered in the Register in accordance with subsection (2), the charge shall be deemed to be registered, and to have been registered from and including the time and date entered in the Register under that subsection.

(4) Where:

(a) a notice in respect of a charge on property of a company is lodged under section 263 or 264 (whether during or after the period within which the notice was required to be lodged); and

(b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty;

the Commission must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in paragraphs (2)(a), (b), (c) and (d), but must cause the word ‘provisional’ to be entered in the Register next to the entry specifying that time and date.

(5) Where:

(a) in accordance with subsection (4), the word “provisional” is entered in the Register next to an entry specifying the time and date on which a notice is respect of a charge was lodged; and

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(b) within a period of 30 days or such longer period as is prescribed after the notice was lodged, or within such further period as the Commission, if it considers it to be appropriate in a particular case, allows, a certificate to the effect set out in paragraph (4)(b) has been produced to the Commission;

the Commission shall delete the word “provisional” from the entry in the Register relating to that charge, but if such a certificate is not produced within the period, or the further period, referred to in paragraph (b), the Commission shall delete from the Register all the particulars that were entered in relation to the charge.

(6) Where a document that purports to be a notice in respect of a charge on property of a company for the purposes of section 263 or 264 is lodged (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the company concerned and the particulars referred to in subparagraph 263(1)(a)(vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective:

(a) the Commission shall cause to be entered in the Register the time and date when the document was lodged and such of the particulars referred to in paragraphs (2)(a), (b), (c) and (d) as are ascertainable from the document, but shall cause the word “provisional” to be entered in the Register next to the entry specifying that time and date; and

(b) the Commission shall, by notice in writing to the person who lodged the document, direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of section 263 or 264, as the case may be, but the giving by the Commission of a direction to the person under this paragraph does not affect any liability that the company may have incurred or may incur by reason of a contravention of section 263 or 264.

(7) Where the Commission gives a direction to a person under paragraph (6)(b) in relation to a charge:

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(a) if the direction is complied with on or before the day specified in the notice containing the direction, the Commission shall:
  (i) delete from the Register the word “provisional” that was inserted pursuant to paragraph (6)(a); and
  (ii) cause to be entered in the Register in relation to the charge any particulars referred to in subsection (2) that have not previously been entered;

(b) if the direction is not complied with on or before that day—the Commission shall delete from the Register all the particulars that were entered in relation to the charge; and

(c) if the direction is complied with after that day—the Commission shall cause to be entered in the Register in relation to the charge the time at which and day on which the direction was complied with and the particulars referred to in paragraphs (2)(a), (b), (c) and (d).

(8) The Commission may enter in the Register in relation to a charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the Commission thinks fit.

(9) If the word “provisional” is entered in the Register next to an entry specifying a time and day in relation to a charge, the charge shall be deemed not to have been registered but:

(a) where the word “provisional” is deleted from the Register pursuant to subsection (5) or paragraph (7)(a)—the charge shall be deemed to be registered and to have been registered from and including the time and day specified in the Register pursuant to subsection (4) or paragraph (6)(a), as the case may be; or

(b) where the particulars in relation to the charge are deleted from the Register pursuant to paragraph (7)(b) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to paragraph (7)(c)—the charge shall be deemed to be registered from and including that last-mentioned time and day.

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(10) Where, pursuant to subsection 263(3), a registrable body lodges notices relating to 2 or more charges on the same property of the registrable body, the time and day that shall be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

(11) Where, in accordance with subsection (10), the time and day that are entered in the Register are the same in relation to 2 or more charges on property of a registrable body, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

(12) Where, pursuant to section 264, a company lodges notices relating to 2 or more charges on the same property acquired by the company (being charges that are not already registered under this Division), the time and day that shall be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

(13) Where, in accordance with subsection (12), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

(14) Where a notice is lodged under section 268 (whether during or after the period within which it was required to be lodged), the Commission shall as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice.

265A Standard time for the purposes of section 265

(1) The Commission may, by *Gazette* notice, declare a specified standard time to be the standard time for the purposes of section 265 of the Corporations Law.

(2) Where a notice is in force under subsection (1) of this section and each corresponding law, a reference in subsection 265(2) or (4), paragraph 265(6)(a) or (7)(c), or subsection 265(10), (12) or (14),

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to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice.

266 Certain charges void against liquidator or official manager

(1) Where:

(a) an order is made, or a resolution is passed, for the winding up of a company; or

(b) an official manager is appointed in respect of a company;

a registrable charge on property of the company is void as a security on that property as against the liquidator or official manager, as the case may be, unless:

(c) a notice in respect of the charge was lodged under section 263 or 264, as the case requires:

(i) within the relevant period; or

(ii) at least 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;

(d) in relation to a charge other than a charge to which subsection 263(3) applies—the period within which a notice in respect of the charge (other than a notice under section 268) is required to be lodged, being the period specified in the relevant section or that period as extended by the Court under subsection (4), has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period;

(e) in relation to a charge to which subsection 263(3) applies—the period of 45 days after the chargee becomes aware that the registrable body has been registered as a company under Division 3 of Part 2.2, or registered under Part 4.1, has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period; or

(f) in relation to a charge to which section 264 applies—the period of 45 days after the chargee becomes aware that the

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property charged has been acquired by a company has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period.

(2) The reference in paragraph (1)(c) to the relevant period shall be construed as a reference to:

(a) in relation to a charge to which subsection 263(1) applies—the period of 45 days specified in that subsection, or that period as extended by the Court under subsection (4) of this section;

(b) in relation to a charge to which subsection 263(3) applies—the period of 45 days after the chargee becomes aware that the registrable body has been registered as a company under Division 3 of Part 2.2 or registered under Part 4.1; or

(c) in relation to a charge to which section 264 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a company.

(3) Where, after there has been a variation in the terms of a registrable charge on property of a company having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge:

(a) an order is made, or a resolution is passed, for the winding up of the company; or

(b) an official manager is appointed in respect of the company;

the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless:

(c) a notice in respect of the variation was lodged under section 268:

(i) within the period of 45 days specified in subsection 268(2) or that period as extended by the Court under subsection (4) of this section; or

(ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be; or

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(d) the period of 45 days specified in subsection 268(2), or that period as extended by the Court under subsection (4) of this section, has not ended at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the end of that period.

(4) The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Division:

(a) was accidental or due to inadvertence or some other sufficient cause; or

(b) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just 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, by order, extend the period for such further period as is specified in the order.

(5) Where:

(a) a registrable charge (in this subsection referred to as the ***later charge***) is created before the end of 45 days after the creation of an unregistered registrable charge (in this subsection referred to as the ***earlier charge***);

(b) the later charge relates to all or any of the property to which the earlier charge related; and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability;

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the company, notwithstanding that a notice in respect of the later charge was lodged under section 263 within a period mentioned in paragraph (1)(c) or (d) of this section, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier

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charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

(6) Nothing in subsection (1) or (3) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of:

(a) the filing of an application for an order for the winding up of the company;

(b) the passing of a resolution for the voluntary winding up of the company; or

(c) the passing of a resolution that the company be placed under official management.

(7) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in paragraphs (6)(a), (b) and (c) is on the person asserting that the property was so purchased.

267 Charges in favour of certain persons void in certain cases

(1) Where:

(a) a company creates a charge on property of the company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and

(b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under subsection (3), given leave for the charge to be enforced;

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and shall be deemed always to have been, void.

(2) Without limiting the generality of subsection (1), a person who:

(a) appoints a receiver of property of a company under powers conferred by an instrument creating or evidencing a charge created by the company; or

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(b) whether directly or by an agent, enters into possession or assumes control of property of a company for the purposes of enforcing a charge created by the company;

shall be taken, for the purposes of subsection (1), to take a step in the enforcement of the charge.

(3) On application by the chargee under a charge, the Court may, if it is satisfied that:

(a) immediately after the creation of the charge, the company that created the charge was solvent; and

(b) in all the circumstances of the case, it is just and equitable for the Court to do so;

give leave for the charge to be enforced.

(4) Nothing in subsection (1) affects a debt, liability or obligation of a company that would, if that subsection had not been enacted, have been secured by a charge created by the company.

(5) Nothing in subsection (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

(6) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subsection (5) is on the person asserting that the property was so purchased.

(7) In this section:

chargee, in relation to a charge, means:

(a) in any case—the holder, or all or any of the holders, of the charge; or

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(b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether upon demand or otherwise—that person, or all or any of those persons;

officer, in relation to a company, includes, in the case of a registered foreign company, a local agent of the foreign company;

receiver includes a receiver and manager;

relevant person, in relation to a charge created by a company, means:

(a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the company; or

(b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

268 Assignment and variation of charges

(1) Where, after a registrable charge on property of a company has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge shall, within 45 days after he, she or it becomes the holder of the charge:

(a) lodge a notice stating that he, she or it has become the holder of the charge; and

(b) give the company a copy of the notice.

(2) Where, after a registrable charge on property of a company has been created, there is a variation in the terms of the charge having the effect of:

(a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or

(b) prohibiting or restricting the creation of subsequent charges on the property;

the company shall, within 45 days after the variation occurs, ensure that there is lodged a notice setting out particulars of the variation

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and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) Where a charge created by a company secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the company in accordance with the terms of the charge shall not be taken, for the purposes of subsection (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture and debentures and there is a trustee for debenture holders, be construed as a reference to the trustee for debenture holders.

(5) Nothing in section 263 requires the lodgment of a notice under that section in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this section.

269 Satisfaction of, and release of property from, charges

(1) Where, with respect to a charge registered under this Division:

(a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or

(b) the property charged or part of that property is released from the charge;

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, within 14 days after receipt of a request in writing made by the company on whose property the charge exists, give to the company a memorandum in the prescribed form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

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(2) The company may lodge the memorandum and, upon the memorandum being lodged, the Commission shall enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in subsection (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, be construed as a reference to the person who was, at that time, the trustee for debenture holders.

270 Lodgment of notices, offences etc.

(1) Where a notice in respect of a charge on property of a company is required to be lodged under section 263 or 264 or subsection 268(2), the notice may be lodged by the company or by any interested person.

(2) Where default is made in complying with section 263 or 264 or subsection 268(2) in relation to a registrable charge on property of a company, the company and any officer of the company who is in default each contravene this subsection.

(3) Where a person who becomes the holder of a registrable charge fails to comply with subsection 268(1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subsection.

(4) Where a document required by this Division other than subsection 268(1) to be lodged is lodged by a person other than the company concerned, that person:

  (a) shall, within 7 days after the lodgment of the document, give to the company a copy of the document; and
  (b) is entitled to recover from the company the amount of any fees properly paid by the person on lodgment of the document.

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271 Company to keep documents relating to charges and register of charges

(1) A company shall keep, at the place where the register referred to in subsection (2) is kept, a copy of every document relating to a charge on property of the company that is lodged under this Division or was lodged with a person under a corresponding previous law, and a copy of every document given to the company under this Division or a corresponding previous law.

(2) A company shall keep a register and shall, upon the creation of a charge (whether registrable or not) on property of the company, or upon the acquisition of property subject to a charge (whether registrable or not), as soon as practicable enter in the register particulars of the charge, giving in each case:

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and

(e) the name of the person whom the company believes to be the holder of the charge.

(3) A register kept by a company pursuant to subsection (2) shall be open for inspection:

(a) by any creditor or member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

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(4) A person may request a company to furnish the person with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(5) If default is made in complying with any provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

272 Certificates

(1) Where particulars of a charge are entered in the Register in accordance with this Division, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission setting out those particulars and stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Commission and, if the word "provisional" appears in the Register next to the reference to that time and day, stating that fact.

(2) A certificate issued under subsection (1) is *prima facie* evidence of the matters stated in the certificate.

(3) Where particulars of a charge are entered in the Register in accordance with this Division, and the word "provisional" does not appear in the register next to the reference to the time and day when a notice in respect of the charge was lodged, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission stating that particulars of the charge are entered in the Register in accordance with this Division.

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(4) A certificate issued under subsection (3) is conclusive evidence that the requirements of this Division as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged) have been complied with.

273 Registration under other legislation relating to charges

(1) Where, whether before or after the prescribed time, a notice in relation to a charge is required to be lodged under this Division:

(a) the charge need not be registered under a specified law of this jurisdiction; and

(b) no provision of a specified law of this jurisdiction relating to priorities applies to or in relation to the charge; and

(c) a failure to register a charge under a specified law of this jurisdiction does not affect the validity, or limit the effect, of the charge.

(2) Where:

(a) a transfer, assignment, or giving of security, by a company is registrable under a specified law of this jurisdiction;

(b) notice in relation to the transfer, assignment or giving of security is required to be lodged under this Division; and

(c) the transfer, assignment or giving of security is registered under this Division;

then:

(d) the transfer, assignment or giving of security is, subject to paragraph (1)(b), as valid and effectual; and

(e) by force of this subsection, the specified provisions (if any) of a law of this jurisdiction have effect, with the prescribed modifications (if any), in relation to the transfer, assignment or giving of security;

as if it had been duly registered under that specified law.

(3) Where:

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(a) a crop lien, wool lien, or stock mortgage, given by a company is registrable under a specified law of this jurisdiction;

(b) notice in relation to the crop lien, wool lien, or stock mortgage, is required to be lodged under this Division; and

(c) the crop lien, wool lien, or stock mortgage, is registered under this Division;

then:

(d) the crop lien, wool lien or stock mortgage is, subject to paragraph (1)(b), as valid and effectual; and

(e) by force of this subsection, the specified provisions (if any) of a law of this jurisdiction have effect, with the prescribed modifications (if any), in relation to the crop lien, wool lien, or stock mortgage;

as if it had been duly registered under that specified law.

(4) Subject to this Part, the regulations may provide that specified provisions of a law of this jurisdiction:

(a) do not apply in relation to specified registrable charges; or

(b) apply, by force of the regulations and with the prescribed modifications (if any), in relation to specified registrable charges.

(5) Nothing in this section applies in relation to a charge given by a company jointly with another person who is not, or other persons at least one of whom is not, a company.

(6) In this section:

specified means specified in an application order.

274 Power of Court to rectify Register

Where the Court is satisfied:

(a) that a particular with respect to a registrable charge on property of a company has been omitted from, or mis-stated in, the Register or a memorandum referred on in section 269; and

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(b) that the omission or mis-statement:

(i) was accidental or due to inadvertence or to some other sufficient cause; or

(ii) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just and equitable to grant relief;

the Court 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 omission or mis-statement be rectified.

275 Charges of Division 2 company

(1) This section applies where a body corporate is taken to be registered as a company under Division 2 of Part 2.2.

(2) On and after the company's registration day, this Part (other than this section) applies in relation to the company, with such modifications as the circumstances require, as if:

(a) the company had always been a company as defined in section 9;

(b) this Law had always been in operation;

(c) an act or thing done by or in relation to the company under, or for the purposes of, a previous law corresponding to a provision of this Part had been done under, or for the purposes of, that provision; and

(d) a reference in this Part to the Register included a reference to a register of company charges kept under a previous law corresponding to section 265.

(3) Nothing in subsection (2) makes a person guilty of a contravention of this Law in respect of an act or thing done, or an omission made, when the company was not a company as defined in section 9.

(4) Subsection (5) applies to each charge on property of the company that, immediately before the company's registration day, was registered under a previous law corresponding to this Division.

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(5) At the commencement of the company's registration day:

(a) there are taken to be entered in the Register the time and date, and the particulars, entered in relation to that charge in the Register kept under that corresponding previous law; and

(b) the time and date, and the particulars, are taken to have been entered in the Register in accordance with subsection 265(2).

276 Charges of Division 3 company

Where a foreign company is registered as a company under Division 3 of Part 2.2 and, immediately before the company's registration day, a charge or charges on property of the company was or were registered under a law, or a previous law, corresponding to this Division and was not or were not registered under this Division:

(a) the Commission shall, as soon as practicable, enter in the Register the time and date, and the particulars, entered in relation to that charge or those charges in the register of company charges kept under that law, or a previous law,; and

(b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with subsection 265(2).

277 Power to exempt from compliance with certain requirements of Division

(1) The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with such of the requirements of section 263, 264 or 268 relating to:

(a) the particulars to be contained in a notice under the relevant section;

(b) the documents (other than the notice) to be lodged under the relevant section; or

(c) the verification of any document required to be lodged under the relevant section;

as are specified in the instrument.

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(2) A person who is exempted by the Commission, subject to a condition, from compliance with a requirement of section 263, 264 or 268 shall not contravene the condition.

(3) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

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Division 3—Order of priority

278 Interpretation

(1) In this Division:

priority time, in relation to a registered charge, means:

(a) except as provided by paragraph (b) or (c)—the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to section 265;

(b) where a notice has been lodged under section 264 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division 2—the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to section 264; and

(c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged under subsection 268(2)—the time and day entered in the Register in relation to the charge pursuant to subsection 265(14);

prior registered charge, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge;

registered charge means a charge that is registered under Division 2;

subsequent registered charge, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge;

unregistered charge means a charge that is not registered under Division 2 but does not include a charge that is not a registrable charge.

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(2) A reference in this Division to a person having notice of a charge includes a reference to a person having constructive notice of the charge.

(3) Where, by virtue of the definition of ***priority time*** in subsection (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities shall, for the purposes of this Division, be deemed to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.

279 Priorities of charges

(1) Subject to this section, sections 280 to 282, inclusive, have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a company.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in sections 280 to 282, inclusive, is subject to:

(a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge; and

(b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a company shall be deemed, for the purposes of subsection (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless:

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(a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and

(b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Commission under section 263, 264 or 268 before the creation of the subsequent registered charge.

(4) Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of subsection 262(1) applies or apply and also relates to other property, sections 280 to 282, inclusive, apply so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

(5) Sections 280 to 282, inclusive, do not apply so as to affect the operation of:

(a) the *Copyright Act 1968*;

(b) the *Designs Act 1906*;

(c) the *Life Insurance Act 1945*;

(d) the *Patents Act 1952*; or

(e) the *Trade Marks Act 1955*.

280 General priority rules in relation to registered charges

(1) A registered charge on property of a company has priority over:

(a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;

(b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the

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unregistered charge at the time when the registered charge was created; and

(c) an unregistered charge on the property created after the creation of the registered charge.

(2) A registered charge on property of a company is postponed to:

(a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

281 General priority rule in relation to unregistered charges

An unregistered charge on property of a company has priority over:

(a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under subsection 280(1); and

(b) another unregistered charge on the property created after the first-mentioned unregistered charge.

282 Special priority rules

(1) Except as provided by the this section, any priority accorded by this Division to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.

(2) Where a registered charge on property of a company secures:

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(a) a present liability and a prospective liability of an unspecified amount; or

(b) a prospective liability of an unspecified amount;

any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.

(3) Where a registered charge on property of a company secures:

(a) a present liability and a prospective liability up to a specified maximum amount; or

(b) a prospective liability up to a specified maximum amount;

and the notice lodged under section 263 or 264 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Division to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

(4) Where:

(a) a registered charge on property of a company secures:

(i) a present liability and a prospective liability up to a specified maximum amount; or

(ii) a prospective liability up to a specified maximum amount;

but the notice lodged under section 263 or 264 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or

(b) a registered charge on property of a company secures a prospective liability of an unspecified amount;

the following paragraphs have effect:

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(c) any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge;

(d) any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

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Part 3.6—Accounts

Division 1—Accounting standards

284 Application of accounting standards: general

(1) An accounting standard may be expressed so as to apply in relation to all companies or specified companies.

(2) Accounting standards may be of general or specially limited application and may differ according to differences in time, locality, place or circumstance.

(3) Neither of subsections (1) and (2) limits the other.

285 Application of accounting standards: financial years

(1) Except so far as the contrary intention appears in an accounting standard, an accounting standard applies to:
 (a) the first financial year of a body corporate that ends after the commencement of the last-mentioned accounting standard; and
 (b) later financial years of the body corporate.

(2) Despite anything in an accounting standard, but subject to subsection (4), an accounting standard does not apply to a financial year of a body corporate ending before the commencement of the last-mentioned accounting standard.

(3) A company's directors may elect in writing that an accounting standard that, apart from subsection (4), does not apply to a particular financial year of the company shall apply to that financial year.

(4) An election under subsection (3) has effect accordingly.

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286 Interpreting accounting standards

(1) An expression has in an accounting standard the same meaning as it has in this Part.

(2) Part 1.2 applies in relation to an accounting standard as if the accounting standard's provisions were provisions of this Part.

(3) This section has effect except so far as the contrary intention appears in an accounting standard.

286A Severing invalid provisions

(1) An accounting standard is to be interpreted subject to this Law.

(2) It is intended that where, but for this section, an accounting standard would have been interpreted as being inconsistent with this Law, the accounting standard is nevertheless to be valid in so far as it is not so inconsistent.

286B Evidence of text of accounting standard

A document that purports:

(a) to be issued or published by or on behalf of the Board or the Commission; and

(b) to set out the text of:

  (i) a specified instrument as in force at a specified time under section 32 of the *Corporations Act 1989*; or

  (ii) a specified provision of such an instrument;

or a copy of such a document, is, in proceedings under the Corporations Law of this jurisdiction, *prima facie* evidence that:

(c) the specified instrument was in force at that time under that section; and

(d) the text set out in the document is the text referred to in paragraph (b).

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287 Power of Board to require copy of accounts or group accounts

Where an auditor of a company has, under subsection 332(11), sent to the Board a copy of a report on the accounts or group accounts of the company, the Board may, by written notice given to the company, require it to furnish to the Board, within 7 days after the notice is given, a copy of the accounts or group accounts.

288 Application of accounting standards approved under a corresponding previous law

(1) This section applies in relation to an accounting standard (in this section called the ***approved standard***) that was at the commencement of this Part an approved accounting standard within the meaning of a previous law of this jurisdiction corresponding to this Part.

(2) As from that commencement, the approved standard has effect, with such modifications as the circumstances require, as if it were an accounting standard as defined in section 9.

(3) In so far as it has effect because of subsection (2), the approved standard applies to a financial year of a body corporate if, and only if, it would apply in relation to that financial year for the purposes of the previous law referred to in subsection (1) if that law still applied and the body were a company within the meaning of that law.

(4) Subsection (3) has effect despite section 285 but subject to an accounting standard as defined in section 9.

(5) Subsection 8(3) does not apply in relation to a reference in this section to a provision of this Law.

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Division 2—Accounting records

289 Accounting records

(1) A company shall:

(a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and

(b) so keep its accounting records that:

(i) true and fair accounts of the company can be prepared from time to time; and

(ii) its accounts can be conveniently and properly audited in accordance with this Law.

(2) A company shall retain the accounting records kept by it under this section, or under a corresponding law, for 7 years after the completion of the transactions to which they relate.

(3) A company shall keep its accounting records at such place or places as its directors think fit.

(4) The Commission may by writing require a company to produce:

(a) at a specified place within Australia that is reasonable in the circumstances; and

(b) within a specified period of at least 14 days;

specified accounting records of the company that are kept outside Australia.

(5) Where accounting records of a company are kept outside Australia, the company shall keep at a place within Australia determined by the directors such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts, and any documents required by this Law to be attached to the accounts, to be prepared.

(6) A company shall lodge written notice of the place in Australia where statements and records kept under subsection (5) are kept,

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unless the statements and records are kept at the registered office of the company.

(7) A company shall keep its accounting records in writing in the English language or so as to enable them to be readily accessible and readily convertible into writing in the English language.

(8) The Court may, on application by a director of a company, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the company.

(9) A company shall make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the company and by any other person authorised or permitted by or under this Law to inspect them.

(10) Where a registered company auditor inspects the accounting records pursuant to an order of the Court under subsection (8), he or she shall not disclose to a person other than the director on whose application the order was made any information acquired by him or her in the course of his or her inspection.

(11) A director of a company shall take all reasonable steps to ensure that the company complies with this section.

(12) In any proceedings against a person for a contravation of subsection (11), it is a defence if the person proves that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was:

(a) charged with the duty of seeing that the company complied with this section; and

(b) was in a position to discharge that duty.

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Division 3—Financial years of holding company and subsidiaries

290 Synchronisation

(1) Subject to this section, the directors of a holding company shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding company coincides with the financial year of the holding company.

(2) The action referred to in subsection (1) shall be taken in relation to a particular subsidiary not later than 12 months after the day on which the subsidiary became a subsidiary of the holding company.

(3) Subject to any order by the Commission under this section, where the financial year of a holding company and the financial year of each of its subsidiaries coincide, the directors of the holding company shall at all times take such action as is necessary to ensure that the financial year of the holding company or any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

(4) Where the directors of a holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, they may apply in writing to the Commission for an order authorising the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

(5) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding company, signed by not less than 2 directors and stating the reasons for seeking the order.

(6) The Commission may require the directors making the application to supply such information relating to the operations of the holding

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company, and of any related corporation, as the Commission thinks necessary for the purpose of determining the application.

(7) The Commission may engage a registered company auditor to investigate and report to it on the application.

(8) The costs of an investigation and report under subsection (7) are payable by the holding company of which the applicants are directors.

(9) The Commission may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as it thinks fit, and shall serve a copy of the order on the holding company.

(10) Where the directors of a holding company make an application under subsection (4) in relation to a subsidiary:

(a) subsection (1) does not apply in relation to the subsidiary until the determination day for the application; and

(b) subject to subsection (12), the period within which the directors of the holding company are required to comply with subsection (1) in relation to the subsidiary is the period of 12 months beginning on that day.

(11) Subsection (10) has effect despite sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*.

(12) Where an order is made under this section authorising a subsidiary of a holding company to have, or to adopt, a financial year that does not coincide with that of the holding company, compliance with the order (including any limitations, terms or conditions set out in it) shall be taken to be compliance with subsection (1) in relation to the subsidiary.

(13) Where the directors of a holding company make an application under subsection (4) in relation to a subsidiary, the directors of the holding company are not entitled to make another application under subsection (4) in relation to the subsidiary within 3 years after the determination day for the first-mentioned application unless:

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(a) the first-mentioned application resulted in the making of an order granting the application or granting it subject to limitations, terms or conditions; or

(b) the Commission is satisfied that there has been a substantial change in the relevant facts or circumstances since that day.

(14) In this section:

determination day, in relation to an application under subsection (4), means:

(a) if the Tribunal makes a decision on an application for review of the Commission's decision on the application under subsection (4)—the day when:

(i) if there is an appeal from the Tribunal's decision—any appeal arising out of the Tribunal's decision is finally determined or otherwise disposed of; or

(ii) otherwise—the Tribunal's decision comes into operation;

(b) if paragraph (a) does not apply but an application is, or applications are, made to the Tribunal for review of the Commission's decision on the application under subsection (4)—the day of withdrawal or dismissal of the application, or of the last of the applications to be withdrawn or dismissed; or

(c) otherwise—the day when the Commission's order on the application under subsection (4) is served on the holding company.

291 Orders under corresponding laws

(1) Where, immediately before a Division 2 company's registration day, an order was in force in relation to the company under a previous law corresponding to section 290, this section applies on and after that day.

(2) The order has effect, with such modifications as the circumstances require, as if it had been made under section 290.

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(3) Subject to section 290, if the order, as in force immediately before the company's registration day, was limited to a specified period, it ceases to have effect at the end of that period.

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Division 4—Financial statements

292 Profit and loss account

A company's directors shall, before the deadline after a financial year, cause to be made out a profit and loss account for that financial year that gives a true and fair view of the company's profit or loss for that financial year.

293 Balance-sheet

A company's directors shall, before the deadline after a financial year, cause to be made out a balance-sheet as at the end of that financial year that gives a true and fair view of the company's state of affairs as at the end of that financial year.

294 Steps to be taken before accounts made out

(1) This section shall be complied with before a company's accounts are made out under sections 292 and 293 in relation to a financial year.

(2) The directors shall take reasonable steps:
  (a) to find out what has been done about writing off bad debts and making provision for doubtful debts; and
  (b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.

(3) The directors shall take reasonable steps to find out whether any current assets, other than bad or doubtful debts, are unlikely to realise (whether directly or indirectly) in the ordinary course of business their value as shown in the company's accounting records and, if so, to cause:
  (a) the value of those assets to be written down to an amount that they might be expected so to realise; or

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(b) adequate provision to be made for the difference between their value as so shown and the amount that they might be expected so to realise.

(4) The directors shall take reasonable steps:

(a) to find out whether the value of any non-current asset is shown in the company's accounting records at an amount that, having regard to the asset's value to the company as a going concern, exceeds the amount that it would have been reasonable for the company to spend to acquire the asset as at the end of the financial year; and

(b) unless adequate provision for writing down the value of that asset is made—to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the value of that asset.

295 Group accounts

The directors of a company that is a group holding company at the end of a financial year shall, before the deadline after the financial year, cause to be made out group accounts that:

(a) deal with:

(i) the group's profit or loss for; and

(ii) the group's state of affairs as at the end of;

that financial year of the company and the corresponding financial years of the other bodies corporate in the group; and

(b) give a true and fair view of the profit or loss and state of affairs so far as they concern members of the company.

296 Audit of financial statements

(1) The directors of a company, other than a company that pursuant to section 325 or 326 did not appoint an auditor to audit the financial statements concerned, shall take reasonable steps to ensure that the company's financial statements for a financial year are audited as required by this Part before the deadline after that financial year.

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(2) A company's directors shall cause to be attached to, or endorsed on, the company's financial statements for a financial year the auditor's report on those financial statements that is furnished to the directors under subsection 332(2).

297 Financial statements to comply with regulations

(1) A company's directors shall ensure that the company's financial statements for a financial year comply with such of the prescribed requirements as are relevant to the financial statements.

(2) Where a company's financial statements for a financial year, as prepared in accordance with subsection (1), would not otherwise give a true and fair view of the matters with which this Division requires them to deal, the directors shall add such information and explanations as will give a true and fair view of those matters.

298 Financial statements to comply with applicable accounting standards

(1) Subject to section 297, a company's directors shall ensure that the company's financial statements for a financial year are made out in accordance with applicable accounting standards.

(2) Despite subsection (1), where a company's financial statements for a financial year would not, if made out in accordance with a particular applicable accounting standard, give a true and fair view of the matters with which this Division requires the financial statements to deal, the directors need not ensure that the financial statements are made out in accordance with that accounting standard.

299 Effect of sections 297 and 298

Neither of sections 297 and 298 affects the generality of any provision of this Division other than those sections.

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300 Inclusion of comparative amounts for items required by accounting standards

(1) Where:

(a) section 298 requires a company's financial statements for a financial year to specify a particular amount (in this subsection called the ***current year amount***); and

(b) that section or a corresponding previous law required the company's financial statements for the previous financial year to specify a corresponding amount;

the directors shall ensure that the first-mentioned financial statements:

(c) set out the corresponding amount in such a way as to allow easy comparison between the current year amount and the corresponding amount; and

(d) if the current year amount has been determined on a different basis from the corresponding amount:

(i) include a note to that effect; and

(ii) set out the corresponding amount in such a way as to draw attention to the note.

(2) For the purposes of this section, section 298 or a corresponding previous law requires a body corporate's financial statements for a financial year to specify an amount if, and only if, the directors:

(a) are required to ensure that the financial statements included an amount relating to the matter to which the first-mentioned amount relates; and

(b) would not have been so required if that section or corresponding previous law had not applied in relation to the financial year.

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Division 5—Directors' statements

301 Statement to be attached to accounts

(1) A company's directors shall cause to be attached to the company's accounts that are, or are included in, the company's financial statements for a financial year a statement complying with this section and subsection 303(2).

(2) The statement shall state whether or not, in the directors' opinion:

(a) the profit and loss account gives a true and fair view of the company's profit or loss for the financial year; and

(b) the balance-sheet gives a true and fair view of the company's state of affairs as at the end of the financial year.

(3) In forming their opinion for the purposes of subsection (2), the directors shall have regard to circumstances that have arisen, and information that has become available, since the end of the financial year and that would, if the accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.

(4) If adjustments have not been made in the accounts to reflect circumstances or information of a kind referred to in subsection (3) that are or is relevant to understanding the accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the accounts, or that amount or particular, from being misleading because adjustments have not been so made.

(5) The statement shall state whether or not, in the directors' opinion, there are, when the statement is made, reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

(6) The statement shall state whether or not the accounts have been made out in accordance with all applicable accounting standards.

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(7) If the applicable accounting standards include accounting standards that apply in relation to the financial year because of an election under section 285, the statement shall specify those accounting standards and state that they so apply.

(8) If the accounts have not been made out in accordance with a particular applicable accounting standard, the statement shall:

(a) state why the accounts, if made out in accordance with that accounting standard, would not have given a true and fair view of the matters with which Division 4 requires them to deal; and

(b) give particulars of the quantified financial effect on the accounts of failing to make them out in accordance with that accounting standard.

(9) If, pursuant to section 326, the company did not appoint an auditor to audit the accounts, the statement shall state whether or not the company has, in respect of the financial year:

(a) kept such accounting records as correctly record and explain its transactions and financial position;

(b) so kept its accounting records that true and fair accounts of the company can be prepared from time to time; and

(c) so kept its accounting records that the accounts of the company can be conveniently and properly audited in accordance with this Law.

(10) The statement shall state whether or not the accounts have been properly prepared by a competent person.

(11) If the company has been dormant throughout the period beginning at the start of the financial year and ending on the day the statement is made, the statement shall state that the company has so been dormant.

302 Statement to be attached to group accounts

(1) The directors of a company that is a group holding company at the end of a particular financial year shall cause to be attached to group

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accounts that are included in the company's financial statements for the financial year a statement that complies with this section and subsection 303(2).

(2) The statement shall state whether or not, in the directors' opinion, the group accounts give a true and fair view of:

(a) the group's profit or loss for; and

(b) the group's state of affairs as at the end of;

that financial year of the company and the corresponding financial years of the other bodies corporate in the group, so far as the profit or loss and state of affairs concern members of the company.

(3) In forming their opinion for the purposes of subsection (2), the directors shall have regard to circumstances that have arisen, and information that has become available, since:

(a) in the case of circumstances or information concerning the company—the end of the financial year; or

(b) in the case of circumstances or information concerning another body corporate in the group—the end of the corresponding financial year of that body;

and that would, if the group accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.

(4) If adjustments have not been made in the group accounts to reflect circumstances or information of a kind referred to in subsection (3) that are or is relevant to understanding the group accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the group accounts, or that amount or particular, from being misleading because adjustments have not been so made.

(5) The statement shall state whether or not the group accounts have been made out in accordance with all applicable accounting standards.

(6) If the applicable accounting standards include accounting standards that apply in relation to the financial year because of an election

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made under section 285, the statement shall specify those accounting standards and state that they so apply.

(7) If the group accounts have not been made out in accordance with a particular applicable accounting standard, the statement shall:

(a) state why the group accounts, if made out in accordance with that accounting standard, would not have given a true and fair view of the matters with which Division 4 requires them to deal; and

(b) give particulars of the quantified financial effect on the group accounts of failing to make them out in accordance with that accounting standard.

(8) If, pursuant to section 326, the company did not appoint an auditor to audit the group accounts, the statement shall state whether they have been properly prepared by a competent person.

(9) If:

(a) the company has been dormant throughout the period beginning at the start of the financial year and ending on the day the statement is made; and

(b) each body corporate that was a subsidiary of the company at any time during the financial year has been dormant throughout each period since the start of the financial year during which it was a subsidiary of the company;

the statement shall state that the company and each such body corporate have so been dormant.

303 Statements under this Division

(1) A company's directors shall comply with section 301, or sections 301 and 302, as the case requires, in relation to a financial year:

(a) unless, pursuant to section 325 or 326, the company did not appoint an auditor to audit its financial statements for the financial year—before the auditor reports under this Part on the financial statements; or

(b) otherwise—before the deadline after the financial year.

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(2) A statement required by section 301 or 302 in relation to a financial year of a company shall:

(a) be made in accordance with a resolution of the directors;

(b) be made not more than 42 days before the day of the deadline after the financial year;

(c) specify the day on which it was made; and

(d) be signed by at least 2 directors.

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Division 6—Directors' reports

304 Report on company other than group holding company

(1) The directors of a company that is not a group holding company at the end of a particular financial year shall cause to be made out a report complying with this Division, other than:

(a) in any case—section 305; and

(b) if at the end of the financial year the company was an exempt proprietary company or a wholly-owned subsidiary of another company or of a recognised company—subsections (7), (8), (9) and (10) of this section.

(2) Subsection (1) does not apply in relation to a company in relation to a financial year if the company is dormant throughout the period beginning at the start of, and ending at the deadline after, the financial year.

(3) The report shall state the names of the directors in office on the day the report is made out.

(4) The report shall state the company's principal activities in the course of the financial year and any significant change in the nature of those activities that occurred during the financial year.

(5) The report shall state the net amount of the company's profit or loss for the financial year after provision for income tax.

(6) The report shall state the amount (if any) that the directors recommend should be paid by way of dividend.

(7) The report shall state the amounts (if any) that have been paid or declared by way of dividend since the start of the financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division or a corresponding law.

(8) The report shall contain a review of the company's operations during the financial year and of the results of those operations.

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(9) The report shall give particulars of any significant change in the company's state of affairs that occurred during the financial year.

(10) The report shall give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect:
- (a) the company's operations;
- (b) the results of those operations; or
- (c) the company's state of affairs;

in financial years after the financial year.

(11) The report shall refer to:
- (a) likely developments in the company's operations; and
- (b) the expected results of those operations;

in financial years after the financial year.

305 Report on group holding company

(1) The directors of a company that is a group holding company at the end of a particular financial year shall cause to be made out a report complying with this Division, other than:
- (a) in any case—section 304; and
- (b) if at the end of the financial year the company was an exempt proprietary company—subsections (7), (8), (9) and (10) of this section.

(2) Subsection (1) does not apply in relation to a company in relation to a financial year if:
- (a) the company is dormant throughout the period beginning at the start of, and ending at the deadline after, the financial year; and
- (b) each body corporate that is a subsidiary of the company at any time during the financial year is dormant throughout so much of each period during which it is a subsidiary of the company as falls within the period referred to in paragraph (a).

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(3) The report shall state the names of the directors in office on the day the report is made out.

(4) The report shall state the principal activities of the group during the financial year and any significant change in the nature of those activities that occurred during the financial year.

(5) The report shall state the net amount of the consolidated profit or loss of the group for the financial year after:
  (a) provision for income tax; and
  (b) deducting any amounts that should properly be attributed to a person other than a body corporate in the group.

(6) The report shall state the amount (if any) that the directors recommend should be paid by way of dividend.

(7) The report shall state the amounts (if any) that have been paid or declared by way of dividend since the start of the financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division or a corresponding law.

(8) The report shall contain a review of the group's operations during the financial year and of the results of those operations.

(9) The report shall give particulars of any significant change in the group's state of affairs that occurred during the financial year.

(10) The report shall give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect:
  (a) the group's operations;
  (b) the results of those operations; or
  (c) the group's state of affairs;
in financial years after the financial year.

(11) The report shall refer to:
  (a) likely developments in the group's operations; and
  (b) the expected results of those operations;
in financial years after that financial year.

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306 Report may omit prejudicial information

If, in the directors' opinion, it would prejudice the company's interests to include in the report particular information, being some or all of the information that subsection 304(11) or 305(11) requires to be so included:

(a) the first-mentioned information need not be so included; and

(b) if it is not so included—the report shall state that some or all, as the case requires, of the information required by that subsection has not been so included.

307 Public companies

If at the end of the financial year the company is a public company and is not a wholly-owned subsidiary of another company or of a recognised company, the report shall contain, or have attached to it, a statement that, in relation to each of the directors, sets out, as at the day the report is made out:

(a) particulars of the directors' qualifications, experience and special responsibilities (if any);

(b) particulars of shares in the company or in a related body corporate that paragraph 235(1)(a) requires to be shown with respect to that director in a register kept in accordance with subsection 235(1); and

(c) particulars of any interest of the director in a contract or proposed contract with the company, being an interest whose nature the director has declared:

   (i) in accordance with subsection 231(1) or a corresponding previous law; and

   (ii) since the date of the last report made out in relation to the company under this subsection or a corresponding previous law.

308 Options

(1) If subsection 304(1) applies, this section applies in relation to the company.

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(2) If subsection 305(1) applies, this section applies in relation to each body corporate in the group that has at any time granted to a person an option to have shares in the body issued to the person.

(3) The report shall state, in relation to each option that the company or body corporate has, during or since the financial year, granted to a person to have shares in the company or body issued to the person:

(a) unless subsection 304(1) applies—the name of the company or body;

(b) the name of the person to whom the option was granted or, if it was granted generally to all the holders of shares or debentures, or of a class of shares or debentures, of the company or body or of any other body corporate, that the option was so granted;

(c) the number and classes of shares in respect of which the option was granted;

(d) the day of expiration of the option;

(e) the basis on which the option is or was to be exercised; and

(f) whether or not a person entitled to exercise the option has or had, by virtue of the option, a right to participate in a share issue of any other body corporate.

(4) The report shall state:

(a) unless subsection 304(1) applies—the name of the company or body corporate;

(b) particulars of shares in the company or body issued, during or since the financial year, by virtue of the exercise of an option;

(c) the number and classes of unissued shares in the company or body under option as at the day the report is made out;

(d) the prices, or the method of fixing the prices, of issue of those unissued shares;

(e) the days of expiration of the options in respect of those unissued shares; and

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(f) particulars of the rights (if any) of the holders of the options in respect of those unissued shares to participate by virtue of the options in any share issue of any other body corporate.

(5) If particulars that this section requires have been stated in a previous report made out in relation to the company under this Division or a corresponding previous law, they may be stated by referring to that report.

309 Benefits under contracts with directors

(1) The report shall set out whether or not, during or since the financial year, a director has received, or become entitled to receive, because of a contract made by the company or a related body corporate with the director, a firm of which the director is a member, or a company in which the director has a substantial financial interest, a benefit other than:

(a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown, in accordance with the regulations made for the purposes of subsection 297(1), in the company's financial statements for the financial year; or

(b) the fixed salary of a full-time employee of the company or a related body corporate.

(2) If so, the report shall set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.

310 Reports generally

(1) A company's directors shall comply with this Division in relation to a financial year before the deadline after the financial year.

(2) A report that this Division requires in relation to a financial year of a company shall:

(a) be made out in accordance with a resolution of the directors;

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(b) be made out not more than 42 days before the day of the deadline after the financial year;

(c) specify the day on which it was made out; and

(d) be signed by at least 2 directors.

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Division 7—Financial statements and directors' reports

311 Rounding off amounts

The regulations may permit specified companies, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Law, in substitution for an amount that the company would, but for this section, be required or permitted to set out in the accounts or report, an amount that is ascertained in accordance with the regulations and is not more than $500 greater or less than the first-mentioned amount.

312 Directors of holding company to obtain all necessary information

(1) Subject to subsection (3), the directors of a company that is a group holding company at the end of a particular financial year shall not cause to be made out the group accounts referred to in section 295, the statement referred to in section 302 or the report referred to in section 305 unless they have available to them sufficient information, in relation to each subsidiary, to enable them to ensure:

(a) that the group accounts will give a true and fair view of:

(i) the group's profit or loss for; and

(ii) the group's state of affairs as at the end of;

that financial year of the company and the corresponding financial years of the other bodies corporate in the group, so far as they concern members of the company; and

(b) that neither the statement nor the report will be false or misleading in a material particular.

(2) The directors of a subsidiary shall, at the request of the directors of the company, supply to the company all the information that is required by the directors of the company for the preparation of the

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group accounts, the statement and the report referred to in subsection (1).

(3) Where the directors of a company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary the information required by the directors of the holding company for the preparation of the group accounts, the statement and the report referred to in subsection (1) within the period within which those accounts, that statement and that report are respectively required, by the provisions referred to in that subsection, to be prepared:

(a) the directors of the holding company shall cause to be made out those group accounts, that statement and that report without incorporating in, or including with, those group accounts, or incorporating in that statement or report, as the case requires, the information relating to the subsidiary, but:

(i) they shall include in those group accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall include in those group accounts, that statement and that report such qualifications and explanations as are necessary to prevent those group accounts, that statement and that report from being misleading; and

(ii) they may qualify accordingly that part of that statement that is made under subsection 302(2); and

(b) where the directors of the holding company have caused to be made out those group accounts, that statement and that report in accordance with paragraph (a), they shall, within 1 month after receiving any of that information from the directors of the subsidiary:

(i) lodge a statement setting out or summarising the information and containing such qualifications and explanations, by the directors of the company, of those group accounts, that statement or that report as are necessary having regard to the information received from the directors of the subsidiary; and

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(ii) send, to each shareholder, a copy of the statement required by subparagraph (i) to be lodged.

313 Relief from requirements as to accounts and reports

(1) A company's directors may apply to the Commission for an order relieving them, relieving the company, or relieving the auditor (if any) of the company, from compliance with specified requirements of this Law relating to, or to the audit of, accounts or group accounts or to the report required by Division 6.

(2) On an application under subsection (1), the Commission may make an order relieving the directors, the company, or the auditor of the company, as the case may be, from compliance with all or any of the specified requirements either unconditionally or on condition that the directors comply, the company complies, or the auditor of the company complies, as the case may be, with such other requirements relating to, or to the audit of, the accounts or group accounts or to the report as the Commission imposes.

(3) An application under subsection (1) shall be in writing supported by a statement in writing made in accordance with a resolution of the directors of the company, signed by not less than 2 directors and stating the reasons for seeking an order.

(4) The Commission may require the directors making application under subsection (1) to supply such information relating to the operations of the company, and of any related body corporate, as the Commission thinks necessary for the purpose of determining the application.

(5) Notice of an order under subsection (2) shall be served on the company to which it relates.

(6) The Commission may, where it considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company included in that class, relieving a company included in that class, or relieving the auditor (if any) of a company included in that class, from compliance with specified

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requirements of this Law relating to, or to the audit of, accounts or group accounts or to the report required by Division 6.

(7) An order under subsection (6) may be made either unconditionally or on condition that the directors of the company comply, the company complies, or the auditor of the company complies, as the case may be, with such other requirements relating to, or to the audit of, accounts or group accounts or to the report as the Commission imposes.

(8) Notice of an order under subsection (6) shall be published in the *Gazette*.

(9) A reference in subsection (1) or (6) to requirements of this Law relating to, or to the audit of, accounts or group accounts does not include a reference to the requirements of section 289.

(10) Without limiting the generality of subsections (1) and (6), a reference in either of those subsections to requirements of this Law relating to, or to the audit of, accounts or group accounts includes:
 (a) a reference to a requirement that an annual return of a company be accompanied by a copy of accounts or group accounts of the company; and
 (b) a reference to a requirement that particulars relating to:
  (i) the profit or loss of a company for a financial year;
  (ii) the state of affairs of a company as at the end of a financial year;
  (iii) the profit or loss of a company and any other body corporate or bodies corporate for respective financial years; or
  (iv) the state of affairs of a company and any other body corporate or bodies corporate as at the end of respective financial years;
 be contained in an annual return of the company.

(11) The Commission shall not make an order in relation to a company, or in relation to a class of companies, unless:

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(a) in relation to each requirement of this Law that is specified in the order, the Commission is of the opinion that compliance with the requirement:
  (i) would render accounts or group accounts, or a report required by Division 6, misleading;
  (ii) would be inappropriate to the circumstances of the company, or of the companies included in that class, as the case may be; or
  (iii) would impose unreasonable burdens on:
    (A) the company, an officer of the company or the auditor (if any) of the company; or
    (B) the companies, or officers or auditors of the companies, included in that class;

  as the case may be; or

(b) the company is a company (in this paragraph called a ***relevant company***):
  (i) not carried on for the purposes of profit or gain to its individual members;
  (ii) prohibited, by the terms of its constitution, from making any distribution, whether in money, property or otherwise, to its members; and
  (iii) required by or under an Australian law to prepare annually a statement of its income and expenditure or a statement as to its financial position, or both;

  or that class is a class of relevant companies, as the case may be.

(12) The reference in subsection (11) to an order in relation to a company, or in relation to a class of companies, is a reference to:
  (a) an order under subsection (1) relieving the directors of the company, relieving the company, or relieving the auditor (if any) of the company; or
  (b) an order under subsection (6) relieving the directors of a company included in that class, relieving a company included in that class, or relieving the auditor (if any) of a company included in that class;

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from compliance with specified requirements of this Law.

(13) The Commission may make an order under subsection (1) or (6) that is limited to a specified period and:
  (a) in the case of an order under subsection (1)—may from time to time either on application by the directors, or without any such application, revoke or suspend the operation of the order; or
  (b) in the case of an order under subsection (6)—may from time to time revoke or suspend the operation of the order.

(14) The revocation or suspension under subsection (13) of an order does not take effect until:
  (a) in the case of an order under subsection (1)—notice of the revocation or suspension is served on the company to which the order relates; and
  (b) in the case of an order under subsection (6)—notice of the revocation or suspension is published in the *Gazette*.

314 Orders under corresponding laws

(1) Where, immediately before a Division 2 company's registration day, an order was in force in relation to the company under a previous law corresponding to section 313, this section applies on and after that day.

(2) The order has effect, with such modifications as the circumstances require, as if:
  (a) it had been made under section 313; and
  (b) there were specified in it, instead of the specified requirements of the previous law, the corresponding requirements of this Law.

(3) Subject to section 313, if the order, as in force immediately before the company's registration day, was limited to a specified period, it ceases to have effect at the end of that period.

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315 Members entitled to financial statements and reports

(1) In this section:

eligible person, in relation to a company, means a person who is entitled to receive notice of general meetings of the company.

(2) A company shall, at or before the time when it sends notice of an annual general meeting to eligible persons or, if the company sends notice of an annual general meeting to eligible persons more than 14 days before the meeting, at least 14 days before the meeting, send to each eligible person a copy of each document a copy of which section 316 requires to be laid before the meeting.

(3) A company shall furnish to a member of the company, whether or not the member is entitled to have sent to him, her or it copies of the accounts or group accounts, to whom copies have not been sent, or a holder of debentures, on request in writing being made by him, her or it to the company, as soon as practicable and without charge, a copy of the last accounts and group accounts (if any) laid or to be laid before the company at its annual general meeting, together with copies of the other documents required under subsection (1) to accompany those accounts and group accounts (if any).

(4) It is a defence to a prosecution for a contravention of subsection (1) or (3) in relation to a person if it is proved that the person had, before the contravention occurred, been furnished with documents as required by that subsection.

(5) This section does not apply in relation to a mutual life assurance company limited by guarantee registered under the *Life Insurance Act 1945*.

(6) Subsections (1) and (3) do not apply in relation to a company in relation to an annual general meeting that is deemed by virtue of section 255 to have been held.

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316 Financial statements and reports to be laid before annual general meeting

A company's directors shall cause to be laid before the annual general meeting of the company that section 245 requires to be held in relation to a financial year:

(a) a copy of the company's financial statements for that financial year;

(b) a copy of each statement that Division 5 requires in relation to that financial year;

(c) a copy of the report that Division 6 requires in relation to that financial year; and

(d) a copy of the auditor's report (if any) about the financial statements that section 332 requires.

317 Commission may require company to lodge accounts etc.

(1) In this section:

annual meeting documents, in relation to a financial year of a company, means the documents copies of which section 316 or a corresponding previous law requires or required to be laid before the annual general meeting of the company that section 245 or a corresponding previous law requires or required to be held in relation to that financial year;

financial year, in relation to a company, does not include a financial year of the company, the company's accounts relating to which were required to be audited under this Part or a corresponding previous law.

(2) The Commission may, by writing served on a company (not being an exempt proprietary company that is an unlimited company), require the company to lodge, within a specified period of at least 14 days, a copy of the company's annual meeting documents for a specified financial year or specified financial years.

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(3) A company need not lodge a copy of a particular document under subsection (1) if the company has previously lodged the document or a copy of the document.

(4) A company need not lodge a copy of a particular document pursuant to a notice under subsection (1) if, as at the time when the notice is served, the document has not been made out, but, if the document is made out after that time, the company shall lodge a copy of the document within 14 days after the document is made out.

318 Contravention of Part

(1) Subject to this section, if a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the provisions of this Part (including any of those provisions as applying by virtue of section 1058) other than Divisions 1 and 2 and section 317, the director contravenes this subsection.

(2) The penalty applicable to a contravention of subsection (1) is:

(a) in a case to which paragraph (b) does not apply—$5,000; or

(b) if the offence was committed with intent to deceive or defraud members of creditors of the company or creditors of any other person or for any other fraudulent purpose—$20,000 or imprisonment for 5 years, or both.

(3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the provisions of this Part relating to the form and content of the accounts or group accounts of a company by reason of an omission from the accounts or group accounts (including any of those provisions as applying by virtue of section 1058), it is a defence if it is proved that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by Division 4 to be dealt with in the accounts or group accounts, as the case may be.

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(4) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, or for having knowingly been the cause of any default under, any of the preceding provisions of this Part (including any of those provisions as applying by virtue of section 1058) relating to the accounts or group accounts of a company by reason that the accounts or group accounts, as the case may be, have not been made out in accordance with an applicable accounting standard, the onus of proving that the accounts or group accounts, as the case may be, would not, if made out in accordance with that accounting standard, have given a true and fair view of the matters required by Division 4 to be dealt with in the accounts or group accounts lies on that person.

(5) If, after the end of the period within which any accounts of a company or any report of the directors of a company is or are required by Division 4, 5 or 6 to be made out, the Commission, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a day and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with Division 4, 5 or 6 proof of the failure to produce the accounts or report as required by the notice is *prima facie* evidence that the accounts or report were not made out within that period.

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Division 8—Inspection of records

319 Inspection of records

(1) Where:

(a) a member of a company applies to the Court for an order authorising a registered company auditor, or a duly qualified legal practitioner, acting on behalf of the member to inspect books of the company; and

(b) the Court is satisfied that the member is acting in good faith and that the inspection is to be made for a proper purpose;

the Court may:

(c) make an order authorising a registered company auditor, or a duly qualified legal practitioner, acting on behalf of the member, at such time as is specified in the order, to inspect, and to make copies of, or take extracts from, specified books of the company; and

(d) make such other order or orders (if any) as it thinks fit including, without limiting the generality of the foregoing, an order relating to the use that may be made of the information disclosed to the member by the registered company auditor or the duly qualified legal practitioner as a result of the inspection.

(2) The right of a member of a company to apply for an order under subsection (1) is in addition to and not in derogation of any right in relation to the inspection of books of a company that a member of a company has under any other law.

320 Disclosure of information

A registered company auditor, or a duly qualified legal practitioner, who inspects books of a company pursuant to an order of the Court under section 319 shall not disclose information acquired in the course of the inspection to a person other than:

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(a) the member of the company on whose application the order was made; or

(b) a staff member, or a member or acting member, of the Commission.

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Division 9—Transitional

321 Application of this Part and Part 3.7 to Division 2 company

A person need not comply with a provision of this Part or Part 3.7 in relation to a Division 2 company in relation to a financial year of the company that ended before its registration day.

322 Continued application to Division 2 company of requirements of corresponding previous law

(1) Where:

(a) a body corporate is taken to be registered as a company under Division 2 of Part 2.2; and

(b) as at the start of the company's registration day, a person (being the company or anyone else) had not fully complied, in relation to the company in relation to a financial year of the company that ended before that day, with the requirements of a previous law corresponding to a provision of this Part (other than sections 289 and 290) or Part 3.7;

subsections (2) and (3) of this section apply, subject to this Law, on and after that day.

(2) The person must comply with those requirements as if, in the previous law referred to in paragraph (1)(b):

(a) a reference to a particular law corresponding to a provision of this Law included a reference to that provision; and

(b) a reference to the NCSC were, or included, as the case requires, a reference to the Commission.

(3) If, at a time, or throughout a period beginning, on or after that day, the person contravenes those requirements, this Law applies as if the person had, at that time or throughout that period, as the case may be, contravened the provision referred to in paragraph (1)(b).

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(4) The regulations may modify or vary, and may grant exemptions from compliance with, requirements with which this section requires a person to comply.

323 Division 3 companies

The regulations may provide for the application of this Part and Part 3.7, with the prescribed modifications (if any), in relation to a Division 3 or 4 company in relation to a financial year of the company ending before its registration day.

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Part 3.7—Audit

324 Qualifications of auditors

(1) Subject to this section, a person shall not:
   (a) consent to be appointed as auditor of a company;
   (b) act as auditor of a company; or
   (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company;

if:
   (d) the person is not a registered company auditor;
   (e) the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, owes more than $5,000 to the company or to a related body corporate; or
   (f) except where the company is an exempt proprietary company, the person:
      (i) is an officer of the company;
      (ii) is a partner, employer or employee of an officer of the company; or
      (iii) is a partner or employee of an employee of an officer of the company.

(2) Subject to this section, a firm shall not:
   (a) consent to be appointed as auditor of a company;
   (b) act as auditor of a company; or
   (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company;

unless:
   (d) at least 1 member of the firm is a registered company auditor who is ordinarily resident in Australia;
   (e) the business name under which the firm is carrying on business is registered under a law of a State or Territory relating to the registration of business names or a return in

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the prescribed form has been lodged showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report;

(f) no member of the firm, and no body corporate in which a member of the firm is a substantial shareholder for the purposes of Part 6.7, owes more than $5,000 to the company or to a related body corporate;

(g) except where the company is an exempt proprietary company, no member of the firm is:

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company; and

(h) except where the company is an exempt proprietary company, no officer of the company receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) A reference in subsection (1) or (2) to indebtedness to a body corporate does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a body corporate that is a prescribed corporation for the purposes of Part 4.5 where:

(a) the indebtedness arose as a result of a loan made to that person by the body corporate in the ordinary course of its ordinary business; and

(b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as his or her principal place of residence.

(4) For the purposes of subsections (1) and (2), a person shall be deemed to be an officer of a company if:

(a) the person is an officer of a related body corporate; or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not

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apply in relation to the person in relation to the company—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related body corporate.

(5) For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of being or having been the liquidator of that company or of a related body corporate.

(6) For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of having been appointed as auditor of that company or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or by reason only of being or having been authorised to accept on behalf of the company or a related body corporate service of process or any notices required to be served on the company or related body corporate.

(7) The appointment of a firm as auditor of a company shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.

(8) Where a firm that has been appointed as auditor of a company is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:

(a) a person who was deemed under subsection (7) to be an auditor of the company and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the company as from the day of his or her retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 329 does not apply to that resignation;

(b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed

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as an auditor of the company as from the day of his or her admission; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the company;

but nothing in this subsection affects the operation of subsection (2).

(9) Except as provided by subsection (8), the appointment of the members of a firm as auditors of a company that is deemed by subsection (7) to have been made by reason of the appointment of the firm as auditor of the company is not affected by the dissolution of the firm.

(10) A report or notice that purports to be made or given by a firm appointed as auditor of a company shall not be taken to be duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(11) Without limiting the generality of section 1311, if, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a company or prepares a report required by this Act to be prepared by an auditor of a company, each member of the firm is guilty of an offence.

(12) Where it is, in the opinion of the Commission, impracticable for an exempt proprietary company to obtain the services of a registered company auditor as auditor of the company by reason of the place where the company carries on business, a person who is, in the opinion of the Commission, suitably qualified or experienced and is approved by the Commission for the purposes of this Act in relation to the audit of the company's accounts may be appointed as auditor of the company, subject to such terms and conditions as are specified in the approval.

(13) A person appointed in accordance with subsection (12) shall, in relation to the auditing of the company's accounts and, if it is a holding company for which group accounts are required, group

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accounts but subject to the terms and conditions of the approval under that subsection, be deemed to be a registered company auditor and the provisions of this Act shall, with the necessary modifications, apply in relation to the person accordingly.

(14) Where a person approved by the Commission under subsection (12) is acting as auditor of a company, the Commission may at any time, by notice in writing given to the company:

(a) amend, revoke or vary the terms and conditions of its approval; or

(b) terminate the appointment of that person as auditor of the company.

(15) A notice under subsection (14) terminating the appointment of a person as auditor of a company takes effect as if, on the date on which the notice is received by the company, the company had received from the person notice of the person's resignation as auditor taking effect from that date.

(16) A person shall not:

(a) if the person has been appointed auditor of a company—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the company; or

(b) if the person is a member of a firm that has been appointed auditor of a company—knowingly disqualify the firm while the appointment continues from acting as auditor of the company.

325 When unlimited exempt proprietary company need not appoint auditor

(1) Despite this Part, an exempt proprietary company that is an unlimited company need not appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or converts to, such a company or is a subsequent annual general meeting, if:

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(a) at the date of the annual general meeting, no member of the company is a person other than:
(i) a natural person; or
(ii) an exempt proprietary company that is an unlimited company; or
(iii) a body corporate that, for the purposes of the Corporations Law of another jurisdiction, is an exempt proprietary company and an unlimited company; and
(b) not more than 1 month before the annual general meeting, all the members of the company have agreed that the company need not appoint an auditor.

(2) The directors of an exempt proprietary company that is an unlimited company need not comply with subsection 327(1) if:
(a) all the members of the company have agreed, on a day not later than 14 days after the incorporation of the company, that the company need not appoint an auditor; and
(b) between the day of the company's incorporation and the day referred to in paragraph (a), no member of the company is a person other than:
(i) a natural person; or
(ii) an exempt proprietary company that is an unlimited company; or
(iii) a body corporate that, for the purposes of the Corporations Law of another jurisdiction, is an exempt proprietary company and an unlimited company.

(3) Where a company, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of the proceedings of general meetings of the company.

(4) An exempt proprietary company that is an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in subsection (1) are satisfied.

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(5) Within 1 month after:

(a) a company that by reason of the circumstances referred to in subsection (1) or (2) does not have an auditor ceases to be an exempt proprietary company or ceases to be an unlimited company; or

(b) a body corporate other than:

(i) an exempt proprietary company that is an unlimited company; or

(ii) a body corporate that, for the purposes of the Corporations Law of another jurisdiction, is an exempt proprietary company and an unlimited company;

becomes a member of an exempt proprietary company that, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor;

the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(6) A person or firm appointed as auditor of a company under subsection (5) holds office, subject to this Division, until the next annual general meeting of the company.

326 When exempt proprietary company need not appoint auditor

(1) Despite this Part, an exempt proprietary company that is not an unlimited company need not appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or becomes, such a company or is a subsequent annual general meeting, if not more than 1 month before the annual general meeting all the members of the company have agreed that the company need not appoint an auditor.

(2) The directors of an exempt proprietary company that is not an unlimited company need not comply with subsection 327(1) if all the members of the company have agreed, on a day not later than

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14 days after the incorporation of the company, that the company need not appoint an auditor.

(3) Where a company, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(4) An exempt proprietary company that is not an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in subsection (1) are satisfied.

(5) Where:

(a) a directors' statement relating to accounts of a company contains a statement to the effect that, in respect of a financial year, the company:

(i) did not keep such accounting records as correctly record and explain its transactions and financial position;

(ii) did not so keep its accounting records that true and fair accounts of the company can be prepared from time to time; or

(iii) did not so keep its accounting records that the accounts of the company can be conveniently and properly audited in accordance with this Act;

(b) a directors' statement relating to accounts of a company contains a statement to the effect that the accounts have not been properly prepared by a competent person;

(c) a directors' statement relating to group accounts of a company contains a statement to the effect that the group accounts have not been properly prepared by a competent person; or

(d) a director of a company is convicted of an offence under subsection 1308(2) or 1309(1) in relation to a matter that, under subsection 301(9) or 302(7), has been stated in a directors' statement relating to accounts or group accounts of the company;

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there shall be deemed to be a vacancy in the office of the auditor of the company and subsection 327(5) applies in relation to that vacancy.

(6) In subsection (5):

(a) a reference to a directors' statement relating to accounts of a company is a reference to a statement that the directors of the company have, under section 301, caused to be attached to the accounts; and

(b) a reference to a directors' statement relating to group accounts of a company is a reference to a statement that the directors of the holding company have, under section 302, caused to be attached to the group accounts.

(7) Where a company, by reason of circumstances referred to in subsection (1) or (2), does not have an auditor and all the members of the company have agreed that the company should appoint an auditor, an auditor may be appointed as if a vacancy had occurred in the office of auditor.

(8) Within 1 month after a company that, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor ceases to be an exempt proprietary company, the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(9) If, within 14 days after a company that has an auditor becomes an exempt proprietary company, all the members of the company agree, this Act does not prevent the company from terminating the appointment of the auditor and, where the appointment is so terminated, a vacancy in the office of auditor of the company shall be deemed not to have occurred.

(10) A person or firm appointed as auditor of a company under subsection (5) or (8) holds office, subject to this Division, until the next annual general meeting of the company and subsection (1) does not apply in relation to that company.

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The Corporations Law—Section 327

327 Appointment of auditors

(1) Within 1 month after the day on which a company is incorporated, the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(2) A person or firm appointed as auditor of a company under subsection (1) holds office, subject to this Part, until the first annual general meeting of the company.

(3) A company shall:

(a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company; and

(b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the company, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(4) A person or firm appointed as auditor under subsection (3) holds office until death or removal or resignation from office in accordance with section 329 or until ceasing to be capable of acting as auditor by reason of subsection 324(1) or (2).

(5) Within 1 month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of the company, if there is no surviving or continuing auditor of the company, the directors shall, unless:

(a) the company at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy; or

(b) where the company is an exempt proprietary company, all the members of the company have within 1 month after the vacancy occurs agreed that it is not necessary for the vacancy to be filled;

appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

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(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7) A company or the directors of a company shall not appoint a person or firm as auditor of the company unless that person or firm has, before the appointment, consented by notice in writing given to the company or to the directors to act as auditor and has not withdrawn his, her or its consent by notice in writing given to the company or to the directors.

(8) A notice under subsection (7) given by a firm shall be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(9) If a company appoints a person or firm as auditor of a company in contravention of subsection (7), the purported appointment does not have any effect and the company and any officer of the company who is in default are each guilty of an offence.

(10) Where an auditor of a company is removed from office at a general meeting in accordance with section 329:

(a) the company may at that meeting (without adjournment), by a resolution passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with subsection 328(3); or

(b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a day not earlier than 20 days and not later than 30 days after the day of the meeting and the company may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the company

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from a member of the company at least 14 clear days before the day to which the meeting is adjourned.

(11) Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under subsection (1), the company shall, within the period of 7 days commencing on the day of the failure, give to the Commission notice of the failure, and, subject to subsection (12), the Commission:

(a) in a case where the company, before the end of that period, gives to the Commission notice of the failure—shall, upon receiving the notice; or

(b) in any other case:

(i) may, at any time after the end of that period and before the Commission receives from the company notice of the failure; and

(ii) if the company, after the end of that period, gives to the Commission notice of the failure—shall, upon receiving the notice;

appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(12) Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under subsection (10), the Commission shall not appoint an auditor of the company under subsection (11):

(a) in any case—if there is another auditor of the company whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor;

(b) in the case of an exempt proprietary company—if:

(i) all the members have, since the removal from office of the first-mentioned auditor, agreed that it is not necessary for an auditor to be appointed; and

(ii) the company has given to the Commission notice of the failure and has, at the time of giving to the Commission

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notice of the failure, given to the Commission notice that all the members have so agreed; or

(c) in a case where, at the end of the period of 7 days commencing on the day of the failure, the company has not given to the Commission notice of the failure—if the Commission has, at any time after the end of that period, already appointed an auditor of the company under subsection (11).

(13) Subject to subsection (11), if a company does not appoint an auditor when required by this Act to do so, the Commission may, on the application in writing of a member of the company, appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(14) A person or firm appointed as auditor of a company under subsection (5), (10), (11) or (13) holds office, subject to this Division, until the next annual general meeting of the company.

(15) Notwithstanding subsection (4), a person or firm who holds the office of auditor of a company that becomes a subsidiary of a corporation shall, unless the person or firm sooner vacates that office, retire at the annual general meeting of that subsidiary next held after it becomes such a subsidiary but, subject to this Division, is eligible for re-appointment.

(16) If a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, subsection (1) or (5), he or she is guilty of an offence.

328 Nomination of auditors

(1) Subject to this section, a company is not entitled to appoint a person or a firm as auditor of the company at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of his, her or its nomination as auditor was given to the company by a member of the company:

(a) before the meeting was convened; or

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(b) not less than 21 days before the meeting.

(2) If a company purports to appoint a person or firm as auditor of the company in contravention of subsection (1), the purported appointment is of no effect and the company and any officer of the company who is in default are each guilty of an offence.

(3) Where notice of nomination of a person or firm for appointment as auditor of a company is received by the company, whether for appointment at a meeting or an adjourned meeting referred to in subsection 327(1) or at an annual general meeting, the company shall:

(a) not less than 7 days before the meeting; or

(b) at the time notice of the meeting is given;

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the company and to each person entitled to receive notice of general meetings of the company.

329 Removal and resignation of auditors

(1) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(2) Where special notice of a resolution to remove an auditor is received by a company, it shall as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice.

(3) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the company and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company at its expense to every member of the company to whom notice of the meeting is sent.

(4) Unless the Commission on the application of the company otherwise orders, the company shall send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his or her right to be heard orally

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or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) An auditor of a company may, by notice in writing given to the company, resign as auditor of the company if:
   (a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the notice was given to the Commission, notified the company in writing of the application to the Commission; and
   (b) the consent of the Commission has been given.

(6) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (5), notify the auditor and the company whether it consents to the resignation of the auditor.

(7) A statement made by an auditor in an application to the Commission under subsection (5) or in answer to an inquiry by the Commission relating to the reasons for the application:
   (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
   (b) may not be made the ground of a prosecution, action or suit against the auditor;

and a certificate by the Commission that the statement was made in the application or in the answer to the inquiry by the Commission is conclusive evidence that the statement was so made.

(8) Subject to subsection (9), the resignation of an auditor takes effect:
   (a) on the day (if any) specified for the purpose in the notice of resignation;
   (b) on the day on which the Commission gives its consent to the resignation; or
   (c) on the day (if any) fixed by the Commission for the purpose;

whichever last occurs.

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(9) The resignation of an auditor of an exempt proprietary company does not require the consent of the Commission under subsection (5), and takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation; or

(b) on the day on which the notice is received by the company;

whichever is the later.

(10) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph 324(2)(d) of acting as auditor of a company, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he or she obtains the consent of the Commission to his or her retirement or withdrawal.

(11) Within 14 days after:

(a) the removal from office of an auditor of a company; or

(b) the receipt of a notice of resignation from an auditor of a company,

the company shall:

(c) lodge with the Commission a notice of the removal or resignation in the prescribed form; and

(d) where there is a trustee for the holders of debentures of the company—give to the trustee a copy of the notice lodged with the Commission.

330 Effect of winding up on office of auditor

An auditor of a company ceases to hold office if:

(a) a special resolution is passed for the voluntary winding up of the company; or

(b) in a case to which paragraph (a) does not apply an order is made by the Court for the winding up of the company.

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331 Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a company are payable by the company.

332 Powers and duties of auditors as to reports on accounts

(1) An auditor of a company shall report to the members on the accounts required to be laid before the company at the annual general meeting and on the company's accounting records and other records relating to those accounts and, if it is a company for which group accounts are required, shall also report to the members on the group accounts.

(2) A report by an auditor of a company under subsection (1) shall be furnished by the auditor to the directors of the company in sufficient time to enable the company to comply with the requirements of subsection 315(2) in relation to that report.

(3) An auditor shall, in a report under this section, state:

(a) whether the accounts and, if the company is a company for which group accounts are required, the group accounts are in the auditor's opinion properly drawn up:

(i) so as to give a true and fair view of the matters required by Division 4 of Part 3.6(or, in the case of a prescribed corporation within the meaning of section 409, by Part 3.6), to be dealt with in the accounts and, if there are group accounts, in the group accounts;

(ii) in accordance with the provisions of this Act; and

(iii) in accordance with applicable accounting standards;

(b) if, in the auditor's opinion, the accounts, or, if the company is a company for which group accounts are required, the accounts or group accounts, have not been drawn up in accordance with a particular applicable accounting standard:

(i) whether, in the auditor's opinion, the accounts or group accounts, as the case may be, would, if drawn up in accordance with that accounting standard, have given a true and fair view of the matters required by Division 4

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of Part 3.6(or, in the case of a prescribed corporation within the meaning of section 409, by Part 3.6) to be dealt with in the accounts or group accounts;

(ii) if, in the auditor's opinion, the accounts or group accounts, as the case may be, would not, if so drawn up, have given a true and fair view of those matters—the auditor's reasons for being of that opinion;

(iii) if the directors have caused to be attached to the accounts or group accounts a statement under section 301 or 302, as the case may be, giving particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts—the auditor's opinion concerning the particulars; and

(iv) if neither subparagraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts, as the case may be;

(c) in the case of group accounts:

(i) the names of the subsidiaries (if any) of which the auditor has not acted as auditor;

(ii) if there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of a subsidiary of which the auditor has not acted as auditor, and the auditor has not examined those accounts and the auditor's report (if any) on those accounts—the name of the subsidiary; and

(iii) where the auditor's report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (4)—the name of the subsidiary and particulars of the qualification or comment;

(d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and

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(e) if the auditor is not satisfied as to any matter referred to in paragraph (a) or (b), the auditor's reasons for not being so satisfied.

(4) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

(a) whether the auditor has obtained all the information and explanations that the auditor required;

(b) whether proper accounting records and other records, including registers, have been kept by the company as required by this Act;

(c) whether the returns received from branch offices of the company are adequate;

(d) where the company is a holding company:

(i) whether the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether the auditor has received satisfactory information and explanations as required by the auditor for that purpose; and

(ii) whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation; and

(e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether the auditor agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts;

and the auditor shall state in the auditor's report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(5) An auditor of a company has a right of access at all reasonable times to the accounting records and other records, including

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registers, of the company, and is entitled to require from any officer of the company such information and explanations as the auditor desires for the purposes of audit.

(6) An auditor of a company for which group accounts are required has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as the auditor requires for the purpose of reporting on the group accounts.

(7) The auditor's report shall be attached to or endorsed on the accounts or group accounts and shall, if a member so requires, be read before the company at the annual general meeting, and is open to inspection by a member at any reasonable time.

(8) An auditor of a company or an agent of the auditor authorised by the auditor in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and to be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor, and is entitled so to be heard notwithstanding that the auditor retires at that meeting or a resolution to remove the auditor from office is passed at that meeting.

(9) If an auditor of a company becomes aware that the company or the directors has or have made default in complying with section 245 or the provisions of section 316 relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Commission a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.

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(10) Except in a case to which subsection (9) applies, if an auditor, in the course of the performance of duties as auditor of a company, is satisfied that:

(a) there has been a contravention of this Act; and

(b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or group accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any body corporate of which the company is a subsidiary;

the auditor shall forthwith report the matter to the Commission by notice in writing.

(11) An auditor of a company who:

(a) is not satisfied that accounts or group accounts of a company have been drawn up in accordance with a particular applicable accounting standard; or

(b) is of the opinion that accounts or group accounts of the company have not been drawn up in accordance with a particular applicable accounting standard;

shall send by post to the Board, within 7 days after the auditor furnishes to the directors of the company the auditor's report under this section on the accounts or group accounts, a copy of the report.

333 Obstruction of auditor

(1) An officer of a body corporate shall not, without lawful excuse, refuse or fail to allow an auditor of the body or of its holding company access, in accordance with the provisions of this Act, to any accounting records and other records, including registers, of the body in the officer's possession, or to give any information or explanation as and when required under those provisions or otherwise hinder, obstruct or delay an auditor in the performance of the auditor's duties or the exercise of the auditor's powers.

(2) An auditor of a body corporate who refuses or fails without lawful excuse to allow an auditor of a holding company of the body

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corporate access, in accordance with the provisions of this Act, to any accounting records and other records, including registers, of the body corporate in the auditor's custody or control, or to give any information or explanation as and when required under those provisions, or otherwise hinders, obstructs or delays an auditor in the performance of the auditor's duties or the exercise of the auditor's powers, contravenes this subsection.

334 Special provisions relating to borrowing corporations and guarantor bodies

(1) The auditor of a borrowing corporation shall, within 7 days after furnishing the corporation or its members with any report, certificate or other document that the auditor is required by this Act or by the debentures or trust deed to give to the corporation or its members, send to every trustee for the holders of debentures of the borrowing corporation a copy of the report, certificate or document, together with a copy of each document accompanying the report, certificate or document so furnished.

(2) Where, in the performance of duties as auditor of a borrowing corporation, or a guarantor body, the auditor becomes aware of any matter that, in the auditor's opinion, is or is likely to be prejudicial to the interests of the holders of debentures of the borrowing corporation and is relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of the debentures, the auditor shall, within 7 days after becoming aware of the matter, send a report in writing on the matter to the corporation of which the auditor is auditor and a copy of the report to the trustee.

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Part 3.8—Annual return

335 Annual return

(1) A company shall, after the end of a financial year of the company and before the end of the period of 1 month commencing immediately after:

(a) unless paragraph (b) applies—the day of the annual general meeting of the company that is held in relation to that financial year; or

(b) if no annual general meeting of the company is held in relation to that financial year within the period within which section 245 requires it to be so held—the end of the last-mentioned period;

lodge an annual return of the company in the prescribed form, containing a list of members and such other particulars as are prescribed and accompanied by the prescribed documents.

(2) The Commission may serve on a company a partly completed annual return of the company that is in the prescribed form and in which the Commission has set out particulars on the basis of information previously received by the Commission.

(3) Where the Commission, under subsection (2), serves on a company a partly completed annual return of the company in which the Commission has set out particulars (in this subsection referred to as the ***relevant particulars***), the company may:

(a) delete such (if any) of the relevant particulars as are incorrect and insert in the return as required the correct particulars of the matters to which the deleted particulars related; and

(b) complete and lodge the return in accordance with this Part;

and, if the company lodges the return, the company shall be deemed, except for the purposes of subsection (2) and this subsection, to have set out in the return such (if any) of the relevant particulars as the company has not deleted.

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337 Exemption of certain companies

(1) A public company that:

(a) has more than 500 members;

(b) keeps its principal register at a place within 25 kilometres of an office of the Commission; and

(c) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred;

need not comply with such of the provisions of this Division and of the regulations made for the purposes of this Division as relate to the inclusion in the annual return of a list of members.

(2) A company limited by guarantee, being a company the memorandum or articles of which prohibits or prohibit the payment of any dividend by the company to its members, need not comply with such of the provisions of this Part and of the regulations made for the purposes of this Part as relate to the inclusion in the annual return of a list of members.

(3) The Commission may, by order published in the *Gazette* require a company to which subsection (1) or (2) applies to comply with all or any of the provisions of this Part or of the regulations made for the purposes of this Part referred to in that subsection.

338 Information in annual return deemed to satisfy certain other lodgment requirements

Where:

(a) a company is or was required by or under a provision of this Law to lodge a document; and

(b) without having lodged the document, the company lodges in accordance with this Part an annual return of the company that sets out all the particulars that are or were required by or under that provision to be set out in the document;

then, for the purposes of this Law (other than section 1354):

(c) the company shall be deemed to lodge the document when the company so lodges the annual return; and

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(d) the document shall be deemed to consist of so much of the annual return as sets out the particulars referred to in paragraph (b).

339 Division 2 company

(1) A Division 2 company need not comply with this Part in relation to a financial year of the company that ended before its registration day.

(2) Where:

(a) a body corporate is taken to be registered as a company under Division 2 of Part 2.2; and

(b) as at the start of the company's registration day, the company had not yet lodged with the NCSC, as required by a previous law corresponding to this Part, a return relating to a financial year of the company ending before that day;

the company shall, within:

(c) if the period within which that law required the company so to lodge the return had not ended as at the start of that day—that period; or

(d) otherwise—14 days after that day;

lodge a return that relates to that financial year and is made out in accordance with the requirements of that law.

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Chapter 4—Various corporations

Part 4.1—Registration of certain bodies

Division 1—Registrable Australian bodies

340 When a registrable Australian body may carry on business in this jurisdiction

A registrable Australian body must not carry on business in this jurisdiction unless:

(a) it is incorporated in this jurisdiction; or

(b) it is unincorporated but is formed, or has its head office or principal place of business, in this jurisdiction; or

(c) it is registered under this Division or a corresponding law; or

(d) it has applied to be so registered and the application has not been dealt with.

341 Application for registration

Subject to section 102A and this Part, where a registrable Australian body lodges an application for registration under this Division that is in the prescribed form and is accompanied by:

(a) a certified copy of a current certificate of its incorporation or registration in its place of origin, or a document of similar effect;

(b) a certified copy of its constitution;

(c) a list of its directors containing particulars with respect to those directors that are equivalent to the particulars that this Law requires the register of the directors, principal executive officers and secretaries of a company to contain;

(d) unless the body is a registrable local body—in relation to each existing charge on property of the body that would be a registrable charge within the meaning of Part 3.5 if the body

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were a registered Australian body, the documents that subsection 263(3) requires to be lodged;

(e) notice of the address of:

(i) if it has in its place of origin a registered office for the purposes of a law (other than this Law or a corresponding law) there in force—that office; or

(ii) otherwise—its principal place of business in its place of origin; and

(f) notice of the address of its registered office under section 359;

the Commission shall:

(g) grant the application and register the body under this Division by entering the body's name in a register kept for the purposes of this Division and of each corresponding law; and

(h) allot to the body a registration number distinct from the registration number of each body corporate (other than the body) already registered under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part.

342 Cessation of business etc

(1) Within 7 days after ceasing to carry on business, a registered Australian body shall lodge written notice that it has so ceased.

(1A) For the purposes of this section, a body carries on business if, and only if, the body carries on business in this jurisdiction or elsewhere.

(2) Where the Commission has reasonable cause to believe that a registered Australian body does not carry on business, the Commission may send to the body in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the body's name off the register.

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(3) Unless the Commission receives, within one month after the date of the letter, an answer to the effect that the body is still carrying on business, it may publish in the *Gazette*, and send to the body in the prescribed manner, a notice that, at the end of 3 months after the date of the notice, the body's name will, unless cause to the contrary is shown, be struck off the register.

(4) At the end of the period specified in a notice sent under subsection (3), the Commission may, unless cause to the contrary has been shown, strike the body's name off the register and shall publish in the *Gazette* notice of the striking off.

(5) Nothing in subsection (4) affects the power of the Court to wind up a body whose name has been struck off the register.

(6) Where a body's name is struck off the register under subsection (4), the body ceases to be registered under this Division.

(7) If the Commission is satisfied that a body's name was struck off the register as a result of an error on the Commission's part, the Commission may restore the body's name to the register, and thereupon the body's name shall be deemed never to have been struck off and the body shall be deemed never to have ceased to be registered under this Division.

(8) A person who is aggrieved by a body's name having been struck off the register may, within 15 years after the striking off, apply to the Court for the body's name to be restored to the register.

(9) If, on an application under subsection (8), the Court is satisfied that:

(a) at the time of the striking off, the body was carrying on business; or
(b) it is otherwise just for the body's name to be restored to the register;

the Court may, by order:

(c) direct the body's name to be restored to the register; and
(d) give such directions, and make such provisions, as it thinks just for placing the body and all other persons in the same

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position, as nearly as practicable, as if the body's name had never been struck off.

(10) On the lodging of an office copy of an order under subsection (9), the body's name shall be deemed never to have been struck off.

(11) Where a body's name is restored to the register under subsection (7) or (9), the Commission shall cause notice of that fact to be published in the *Gazette*.

(12) Where a body ceases to be registered under this Division, an obligation to lodge a document that this Law imposes on the body by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time when the body so ceased, being an obligation not discharged at or before that time, continues to apply in relation to the body even if the period prescribed for lodging the document has not ended at or before that time.

(13) Where a registered Australian body commences to be wound up, or is dissolved, in its place of origin, the Court shall, on application by the person who is the liquidator for the body's place of origin, or by the Commission, appoint a liquidator of the body.

(14) A liquidator of a registered Australian body who is appointed by the Court:

(a) shall, before any distribution of the body's property is made, by advertisement in a daily newspaper circulating generally in each State or Territory where the body carried on business at any time during the 6 years before the liquidation, invite all creditors to make their claims against the body within a reasonable time before the distribution;

(b) shall not, without obtaining an order of the Court, pay out a creditor of the body to the exclusion of another creditor of the body; and

(c) shall, unless the Court otherwise orders, recover and realise the property of the body in Australia outside the body's place of origin and shall pay the net amount so recovered and realised to the liquidator of the body for its place of origin.

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(15) Where a registered Australian body has been wound up so far as its property in Australia outside its place of origin is concerned and there is no liquidator for its place of origin, the liquidator may apply to the Court for directions about the disposal of the net amount recovered under subsection (14).

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Division 2—Foreign companies

343 When a foreign company may carry on business in this jurisdiction

A foreign company must not carry on business in this jurisdiction unless:

(a) it is registered under this Division or a corresponding law; or

(b) it has applied to be so registered and the application has not been dealt with.

344 Application for registration

Subject to section 102A and this Part, where a foreign company lodges an application for registration under this Division that is in the prescribed form and is accompanied by:

(a) a certified copy of a current certificate of its incorporation or registration in its place of origin, or a document of similar effect;

(b) a certified copy of its constitution;

(c) a list of its directors containing particulars with respect to those directors that are equivalent to the particulars that this Law requires the register of the directors, principal executive officers and secretaries of a company to contain;

(d) if that list includes directors who are:

  (i) resident in Australia; and

  (ii) members of a local board of directors;

  a memorandum that is duly executed by or on behalf of the foreign company and states the powers of those directors;

(e) in relation to each existing charge on property of the foreign company that would be a registrable charge within the meaning of Part 3.5 if the foreign company were a registered foreign company, the documents that subsection 263(3) requires to be lodged;

(f) notice of the address of:

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(i) if it has in its place of origin a registered office for the purposes of a law there in force—that office; or

(ii) otherwise—its principal place of business in its place of origin; and

(g) notice of the address of its registered office under section 359;

the Commission shall:

(h) grant the application and register the foreign company under this Division by entering the foreign company's name in a register kept for the purposes of this Division and of each corresponding law; and

(j) allot to the foreign company a registration number distinct from the registration number of each body corporate (other than the foreign company) already registered under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part.

345 Appointment of local agent

(1) A foreign company may at any time appoint a person as a local agent.

(2) The Commission shall not register a foreign company under this Division unless the foreign company has at least one local agent in relation to whom the foreign company has complied with section 346.

(3) Where:

(a) because a person ceased on a particular day to be a local agent of the foreign company, a registered foreign company has no local agent; and

(b) the foreign company carries on business, or has a place of business, in Australia;

the foreign company shall, within 21 days after that day, appoint a person as a local agent.

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346 Local agent: how appointed

(1) A foreign company that lodges a memorandum of appointment, or a power of attorney, that is duly executed by or on behalf of the foreign company and states the name and address of a person who is:
   (a) a natural person or a company;
   (b) resident in Australia; and
   (c) authorised to accept on the foreign company's behalf service of process and notices;
shall be taken to appoint that person as a local agent.

(2) Where a memorandum of appointment, or a power of attorney, lodged under subsection (1) is executed on the foreign company's behalf, the foreign company shall, unless it has already done so, lodge a copy, verified in writing in the prescribed form to be a true copy, of the document authorising the execution.

(3) A copy lodged under subsection (2) shall be deemed for all purposes to be the original of the document.

(4) A foreign company that appoints a local agent shall lodge a written statement that is in the prescribed form and is made by the local agent.

(5) A person whom a foreign company appoints as a local agent is a local agent of the foreign company until the person:
   (a) ceases by virtue of section 347 to be such a local agent; or
   (b) dies or ceases to exist.

347 Local agent: how removed

(1) Where a person is a local agent of a foreign company, the foreign company or the person may lodge a written notice stating that the person's appointment as a local agent has terminated, or will terminate, on a specified day.

(2) Where a notice is lodged under subsection (1), the person ceases to be a local agent of the foreign company at the end of:

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(a) the period of 21 days beginning on the day of lodgment; or
(b) the day specified in the notice;

whichever is the later.

348 Liability of local agent

A local agent of a registered foreign company:

(a) is answerable for the doing of all acts, matters and things that the foreign company is required by or under this Law to do; and
(b) is personally liable to a penalty imposed on the foreign company for a contravention of this Law unless the local agent satisfies the court or tribunal hearing the matter that the local agent should not be so liable.

349 Balance-sheets and other documents

(1) Subject to this section, a registered foreign company shall, at least once in every calendar year and at intervals of not more than 15 months, lodge a copy of its balance-sheet made up to the end of its last financial year, and a copy of its profit and loss account for its last financial year, in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to that company in its place of origin, together with a statement in writing in the prescribed form verifying that the copies are true copies of the documents so required.

(2) The Commission may extend the period within which subsection (1) requires a balance-sheet, profit and loss account or other document to be lodged.

(3) The Commission may, if it is of the opinion that the balance-sheet, the profit and loss account and the other documents referred to in subsection (1) do not sufficiently disclose the company's financial position:

(a) require the company to lodge a balance-sheet;
(b) require the company to lodge an audited balance-sheet;

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(c) require the company to lodge a profit and loss account; or

(d) require the company to lodge an audited profit and loss account;

within such period, in such form, containing such particulars and including such documents as the Commission by notice in writing to the company requires, but this subsection does not authorise the Commission to require a balance-sheet or a profit and loss account to contain any particulars or include any documents that would not be required to be furnished if the company were a public company within the meaning of this Law.

(4) The registered foreign company shall comply with the requirements set out in the notice.

(5) Where a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a balance-sheet, the company shall prepare and lodge a balance-sheet, or, if the Commission so requires, an audited balance-sheet, within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Law.

(6) Where a registered foreign company is not required by the law of its place of origin to prepare a profit and loss account, the company shall prepare and lodge a profit and loss account or, if the Commission so requires, an audited profit and loss account, within such period, in such form, containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Law.

(7) The Commission may, by *Gazette* notice, declare that this section does not apply to specified foreign companies.

(8) Subsections (1) to (6), inclusive, do not apply in relation to a foreign company in relation to which a notice is in force under subsection (7) or a corresponding law.

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350 Cessation of business, etc

(1) Within 7 days after ceasing to carry on business in Australia, a registered foreign company shall lodge written notice that it has so ceased.

(2) Where the Commission receives notice from a local agent of a registered foreign company that the foreign company has been dissolved, the Commission shall remove the foreign company's name from the register.

(3) Where the Commission has reasonable cause to believe that a registered foreign company does not carry on business in Australia, the Commission may send to the foreign company in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the foreign company's name off the register.

(4) Unless the Commission receives, within one month after the date of the letter, an answer to the effect that the foreign company is still carrying on business in Australia, it may publish in the *Gazette*, and send to the foreign company in the prescribed manner, a notice that, at the end of 3 months after the date of the notice, the foreign company's name will, unless cause to the contrary is shown, be struck off the register.

(5) At the end of the period specified in a notice sent under subsection (4), the Commission may, unless cause to the contrary has been shown, strike the foreign company's name off the register and shall publish in the *Gazette* notice of the striking off.

(6) Nothing in subsection (5) affects the power of the Court to wind up a foreign company whose name has been struck off the register.

(7) Where a foreign company's name is struck off the register under subsection (5), the foreign company ceases to be registered under this Division.

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(8) If the Commission is satisfied that a foreign company's name was struck off the register as a result of an error on the Commission's part, the Commission may restore the foreign company's name to the register, and thereupon the foreign company's name shall be deemed never to have been struck off and the foreign company shall be deemed never to have ceased to be registered under this Division.

(9) A person who is aggrieved by a foreign company's name having been struck off the register may, within 15 years after the striking off, apply to the Court for the foreign company's name to be restored to the register.

(10) If, on an application under subsection (9), the Court is satisfied that:

(a) at the time of the striking off, the foreign company was carrying on business in Australia; or

(b) it is otherwise just for the foreign company's name to be restored to the register;

the Court may, by order:

(c) direct the foreign company's name to be restored to the register; and

(d) give such directions, and make such provision, as it thinks just for placing the foreign company and all other persons in the same position, as nearly as practicable, as if the foreign company's name had never been struck off.

(11) On the lodging of an office copy of an order under subsection (9), the foreign company's name shall be deemed never to have been struck off.

(12) Where a foreign company's name is restored to the register under subsection (8) or (10), the Commission shall cause notice of that fact to be published in the *Gazette*.

(13) Where a foreign company ceases to be registered under this Division, an obligation to lodge a document that this Law imposes on the foreign company by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time when the foreign

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company so ceased, being an obligation not discharged at or before that time, continues to apply in relation to the foreign company even if the period prescribed for lodging the document has not ended at or before that time.

(14) Where a registered foreign company commences to be wound up, or is dissolved, in its place of origin:

(a) each person who, on the day when the winding up proceedings began, was a local agent of the foreign company shall, within the period of 1 month after that day or within that period as extended by the Commission in special circumstances, lodge or cause to be lodged notice of that fact and, when a liquidator is appointed, notice of the appointment; and

(b) the Court shall, on application by the person who is the liquidator for the foreign company's place of origin, or by the Commission, appoint a liquidator of the foreign company

(15) A liquidator of a registered foreign company who is appointed by the Court:

(a) shall, before any distribution of the foreign company's property is made, by advertisement in a daily newspaper circulating generally in each State or Territory where the foreign company carried on business at any time during the 6 years before the liquidation, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;

(b) shall not, without obtaining an order of the Court, pay out a creditor of the foreign company to the exclusion of another creditor of the foreign company; and

(c) shall, unless the Court otherwise orders, recover and realise the property of the foreign company in Australia and shall pay the net amount so recovered and realised to the liquidator of the foreign company for its place of origin.

(16) Where a registered foreign company has been wound up so far as its property in Australia is concerned and there is no liquidator for its place of origin, the liquidator may apply to the Court for

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directions about the disposal of the net amount recovered under subsection (15).

351 Principal Australian register of foreign company

(1) A registered foreign company that has a share capital may cause a branch register of members to be kept in Australia.

(2) Where a member of a registered foreign company is resident in Australia and requests the foreign company in writing to register in a branch register in Australia shares held by the member, then:

(a) if the foreign company already keeps a principal Australian register—the foreign company shall register in that register the shares held by the member; or

(b) otherwise—the foreign company shall, within 1 month after receiving the request:

(i) keep at its registered office or at some other place in Australia a branch register of members; and

(ii) register in that register the shares held by the member.

(3) Subsection (2) does not apply in relation to a foreign company whose constitution prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, shares in the foreign company.

(4) Subject to this section, a registered foreign company that does not keep a register under section 352 may discontinue its principal Australian register and shall, if it does so, transfer all entries in that register to a register of members kept outside Australia.

(5) Where shares held by a member of a registered foreign company who is resident in Australia are registered in the foreign company's principal Australian register, the foreign company shall not discontinue that register without that member's written consent.

352 Branch registers in Australia

(1) A registered foreign company that has a share capital and keeps a principal Australian register in a State or Territory may cause a

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branch register of members to be kept at a place outside that State or Territory.

(2) Where a member of a registered foreign company that keeps a principal Australian register in a State or Territory is resident in another State or Territory and requests the foreign company in writing to register in a branch register in that other State or Territory shares held by the member, then, if the foreign company keeps a branch register in that other State or Territory, the foreign company shall register in that branch register the shares held by that member.

(3) A foreign company shall keep, at the place where its principal Australian register is kept, a duplicate of each of its branch registers, properly entered up from time to time.

(4) A duplicate kept under subsection (3) shall be deemed to be part of the principal Australian register.

(5) Within 28 days after an entry is made in the branch register of a foreign company, the foreign company shall send a copy of the entry to the place where its principal Australian register is kept.

(6) Subject to subsections (3), (4) and (5), a foreign company shall distinguish shares in the foreign company that are registered in a branch register from the shares registered in its principal Australian register.

(7) Subject to subsections (3), (4) and (5), while shares in a foreign company are registered in a branch register, the foreign company shall not register in its principal Australian register or in any other branch register a transaction in relation to the shares.

(8) A foreign company may discontinue a branch register kept in a State or Territory and shall, if it does so, transfer all entries in that register:

(a) if the foreign company keeps another branch register in that State or Territory—to that other branch register; or

(b) otherwise—to the principal Australian register.

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353 Register kept under section 351 or 352

(1) This section has effect where a registered foreign company keeps a register under section 351 or 352.

(2) The foreign company shall keep the register in the same manner as this Act requires a company to keep its principal register.

(3) Subject to subsection (2), the foreign company shall register a transaction in the register in the same way, and at the same charge, as it would have registered the transaction in the register of members that the foreign company keeps in its place of origin.

(4) A transfer of shares in the foreign company that is lodged at the foreign company's registered office, or at the place where the register is kept, is binding on the foreign company.

(5) The Court has the same powers in relation to rectification of the register as it has in relation to rectification of a company's register of members.

(6) The register shall be deemed to be part of the foreign company's register of members.

(7) At the written request of a member who holds shares registered in the register, the foreign company shall remove the shares from the register and register them in such other register as is specified in the request.

(8) The register is *prima facie* evidence of matters that this Law requires or authorises to be entered in the register.

354 Notifying Commission about register kept under section 351 or 352

Within 14 days after:

(a) beginning to keep a register under section 351 or 352;
(b) changing the place where a register is so kept; or
(c) discontinuing a register under section 351 or 352;

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a registered foreign company shall lodge a written notice of that fact specifying, if paragraph (a) or (b) applies, the address or new address, as the case may be, where the register is kept.

355 Effect of right to acquire shares compulsorily

Where:

(a) a law of the place of origin of a foreign company that corresponds to section 414 or 701 entitles a person to give notice to another person that the first-mentioned person wishes to acquire shares in the foreign company that the other person holds; and

(b) some or all of those shares are registered in a register kept under section 351 or 352;

sections 351, 352, 353 and 354 cease to apply in relation to the foreign company until the first-mentioned person acquires, or ceases to be entitled to acquire, the shares so registered.

356 Index of members and inspection and closing of registers

The provisions of section 209 relating to the keeping of an index of the names of members of a company apply, with such adaptations as are necessary, in relation to persons holding shares in a register kept under section 351 or 352 and section 210 applies, with such adaptations as are necessary, to the inspection and closing of such a register and of an index kept in relation to such a register.

357 Certificate as to shareholding

A certificate under the seal of a foreign company specifying shares held by a member of that company and registered in a register kept under section 351 or 352 is *prima facie* evidence of the title of the member to the shares and of the fact that the shares are registered in the register.

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Division 3—Bodies registered under this Part

358 Names

(1) The Commission shall not register a body corporate under Division 1 or 2 unless the body's name is reserved under section 376 in respect of the body.

(2) A registered body must not use a name in this jurisdiction unless:

(a) the body is registered under that name under Division 1 or 2 or a corresponding law; or

(b) the name is registered in respect of the body under the law of this jurisdiction relating to business names.

(3) Subject to this section, where a registered body lodges in accordance with section 361 notice of particulars of a change in the body's name, the Commission shall alter the register it keeps for the purposes of Division 1 or 2, as the case requires, by substituting the body's new name for the name by which the body was previously registered.

(4) The Commission shall not register under subsection (3) a change in a registered body's name unless the name to which the body proposes to change its name is reserved under section 377 in respect of the body.

359 Registered office

(1) A registered body shall have a registered office in Australia to which all communications and notices may be addressed and that shall be open:

(a) if the body has:

(i) lodged a notice under subsection (2); or

(ii) lodged a notice under subsection (2) and a notice or notices under subsection (4);

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for such hours (being not fewer than 3) between 9 a.m. and 5 p.m. on each business day as are specified in that notice, or in the later or last of those notices, as the case may be; or

(b) otherwise—for not fewer than 5 hours between 10 a.m. and 4 p.m. on each business day;

and at which a representative of the body is present at all times when the office is open.

(2A) A registered body must ensure that its registered office under this section and its registered offices under the laws corresponding to this section are all at the same place.

(2) A registered body may lodge written notice of the hours (being not fewer than 3) between 9 a.m. and 5 p.m. on each business day during which the body's registered office is open.

(3) Within 7 days after a change in the situation of its registered office, a registered body shall lodge a written notice of the change and of the new address of that office.

(4A) Where:

(a) a registered body has a registered office under a law corresponding to this section; and

(b) the situation of that office changes;

the situation of the body's registered office under this section is taken to change to the new situation of the office referred to in paragraph (a).

(4) A registered body that has lodged a notice under subsection (2) shall, within 7 days after a change in the hours during which its registered office is open, lodge a notice, in the prescribed form, of the change.

360 Certificate of registration

(1) On registering a body corporate under Division 1 or 2 or registering under subsection 358(3) a change in a registered body's name, the Commission shall issue to the body a certificate, under

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the Commission's common seal and in the prescribed form, of the body's registration under that Division.

(2) A certificate under subsection (1) or a corresponding law is *prima facie* evidence of the matters stated in it.

361 Notice of certain changes

(1) A registered body shall, within 1 month after a change in:

(a) its name;

(b) its constitution or any other document lodged in relation to the body;

(c) its directors;

(d) if the body is a foreign company;

(i) the powers of any directors who are resident in Australia and members of an Australian board of directors of the foreign company;

(ii) a local agent or local agents; or

(iii) the name or address of a local agent; or

(e) the situation of:

(i) if it has in its place of origin a registered office for the purposes of a law (other than this Law or a corresponding law) there in force—that office; or

(ii) otherwise—its principal place of business in its place of origin;

lodge a written notice of particulars of the change, together with such documents (if any) as the regulations require.

(2) The Commission may in special circumstances extend the period within which subsection (1) requires a notice or document to be lodged.

362 Publication of name etc.

(1A) A reference in this section to issuing, signing or publishing is a reference to issuing, signing or publishing, as the case may be, in this jurisdiction.

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The Corporations Law—Section 362

(1) This section applies to a registrable body other than a registrable local body.

(2) The body shall set out in legible characters on every public document of the body that is issued, signed or published:

(a) in any case—the body's name;

(b) unless the body is an Australian bank—the name of the body's place of origin; and

(c) if:

(i) the liability of the body's members is limited;

(ii) the last word of the body's name is neither the word "Limited" nor the abbreviated "Ltd."; and

(iii) the body is not an Australian bank;

notice of the fact that the liability of the body's members is limited.

(3) The body shall set out its name, in legible characters, on every eligible negotiable instrument of the body that is signed or issued.

(4) On:

(a) every public document of the body that is issued, signed or published; and

(b) every eligible negotiable instrument of the body that is signed or issued;

the body shall set out in legible characters, after the body's name when it first appears, the expression "Australian Registered Body Number" and the body's registration number.

(5) The body may comply with subsection (4) by setting out:

(a) the abbreviation "Aust." instead of the word "Australian";

(b) the abbreviation "Regd." instead of the word "Registered";

(c) the abbreviation "No." instead of the word "Number"; or

(d) the abbreviation "A.R.B.N." instead of the expression "Australian Registered Body Number".

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(6) An officer of the body, or any other person, shall not, on the body's behalf, issue, sign or publish a public document of the body that contravenes subsection (2) or (4).

(7) An officer of the body, or any other person, shall not sign or issue, or authorise to be signed or issued, on the body's behalf, an eligible negotiable instrument of the body that contravenes subsection (3).

(8) A person who contravenes subsection (7) is liable to the holder of the eligible negotiable instrument for the amount due on it unless that amount is paid by the body.

(9) Unless the body is an Australian bank, it shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of every office and place (including its registered office) that is in this jurisdiction, at which its business is carried on and that is open and accessible to the public:

(a) its name and the name of its place of origin;

(b) if the liability of its members is limited and the last word of its name is neither the word "Limited" nor the abbreviated "Ltd."—notice of the fact that the liability of its members is limited; and

(c) in the case of its registered office—the expression "Registered Office".

(10) If the body is an Australian bank, it shall paint or affix its name, and shall keep its name painted or affixed, in a conspicuous position and in letters easily legible, on the outside of every office or place (including its registered office) that is in this jurisdiction, at which its business is carried on and that is open and accessible to the public.

363 Service of documents on registered body

(1) A document may be served on a registered body:

(a) by leaving it at, or by sending it by post to, the registered office of the body; or

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(b) in the case of a registered foreign company—by leaving it at, or by sending it by post to, the address of a local agent of the foreign company, being:

(i) in a case to which subparagraph (ii) does not apply—an address notice of which has been lodged under subsection 346(1); or

(ii) if a notice or notices of a change or alteration in that address has or have been lodged under subsection 361(1)—the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.

(2) For the purposes of subsection (1), the situation of the registered office of a registered body:

(a) in a case to which neither paragraph (b) nor paragraph (c) applies—shall be deemed to be the place notice of the address of which has been lodged under paragraph 341(e) or 344(g);

(b) if only one notice of a change in the situation of the registered office has been lodged with the Commission under subsection 359(3)—shall, on and from:

(i) the day that is 7 days after the day on which the notice was lodged; or

(ii) the day that is specified in the notice as the day from which the change is to take effect;

whichever is later, be deemed to be the place the address of which is specified in the notice; or

(c) if 2 or more notices of a change in the situation of the registered office have been lodged under subsection 359(3)—shall, on and from:

(i) the day that is 7 days after the day on which the later or latest of those notices was lodged; or

(ii) the day that is specified in the later or latest of those notices as the day from which the change is to take effect;

whichever is later, be deemed to be the place the address of which is specified in the relevant notice;

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and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the registered office of the registered body in a return or other document (not being a notice under subsection 359(3)) lodged after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

(3) Without limiting the operation of subsection (1), if 2 or more directors of a registered body reside in Australia or an external Territory, a document may be served on the body by delivering a copy of the document personally to each of 2 of those directors.

(4) Where a liquidator of a registered body has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.

(5) Nothing in this section affects the power of the Court to authorise a document to be served on a registered body in a manner not provided for by this section.

(6) Subject to subsection 8(4), subsection 8(3) applies in relation to a reference in this section.

364 Power to hold land

A registered body has power to hold land in this jurisdiction.

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Division 4—Transitional

365A Bodies registered under previous foreign companies law of this jurisdiction

This Division (except section 365F) applies to each registrable body that was, immediately before the commencement of this Part (in this Division called the ***commencement***), registered under a previous law of this jurisdiction relating to foreign companies within the meaning of that law.

365B Deemed registration under Division 1 or 2

(1) If the body is a registrable Australian body, the Commission is taken to have registered it under Division 1 at the commencement.

(2) If the body is a foreign company, the Commission is taken to have registered it under Division 2 at the commencement.

(3) The Commission need not issue a certificate under subsection 360(1) merely because of the effect of this section.

365C Registered office under previous law

Subject to this Part, the body's registered office under section 359 is taken to be at the place that, immediately before the commencement, was taken by a previous law of this jurisdiction corresponding to subsection 363(2) to be the situation of the body's registered office for the purposes of a previous law of this jurisdiction corresponding to subsection 363(1).

365D Transition to single registered office in Australia

(1) This section applies if the body has under a law or laws corresponding to section 359 a registered office that is, or registered offices that are, because of a law or laws corresponding to section 365C, at a place or places different from the place of the body's registered office under section 359.

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(2) The body must ensure that, within 6 months after the commencement:
   (a) all of the offices referred to in subsection (1) are at the same place; and
   (b) the body has, in relation to a change in the situation of any of those offices that happens, or is taken by subsection 359(4A) or a corresponding law to happen, and is necessary for the body to comply with this section, complied with subsection 359(3) or a corresponding law, as the case requires.

(3) If the body contravenes subsection (2), the Commission may give to the body a notice stating that, as from the end of 6 days after the day on which the notice is given, the body's registered office under section 359 of the Corporations Law will be at a specified place (being a place that is taken because of subsection (6) of this section to be a registered office of the body under section 359 of this Law).

(4) If the Commission gives a notice under subsection (3), then:
   (a) unless the body's registered office under section 359 is already at the specified place, that office changes to that place at the end of 6 days after the day on which the notice is given; and
   (b) the Commission must keep a copy of the notice.

(5) A copy of a notice that is kept under subsection (4) is taken to be a notice lodged by the body under subsection 359(3) on the day when the first-mentioned notice was served under subsection (3).

(6) Until the body complies with subsection (2) or the end of 6 days after the day on which the Commission gives a notice under subsection (3), each place that, apart from this subsection, would be taken by subsection 363(2) or a corresponding law to be the situation of the body's registered office for the purposes of subsection 363(1) or a corresponding law is taken for all purposes (including subsection 363(1)) to be the situation of a registered office of the body under section 359.

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365E Application of sections 359 and 363

Subsections 359(1) and (4) and 363(1) and (2) apply in relation to the body as if a reference in them to a provision of this Law included a reference to a previous law of this jurisdiction corresponding to that provision of this Law.

365F Application of section 363 in relation to certain bodies

(1) This section applies where a registrable body is registered under a law corresponding to Division 1 or 2 but is not registered under that Division.

(2) Subsection 363(2) does not apply in relation to the body.

(3) Instead, each place that is taken by a law corresponding to subsection 363(2) to be the situation of the body's registered office for the purposes of a law corresponding to subsection 363(1) is taken to be the situation of a registered office of the body for the purposes of subsection 363(1).

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Part 4.2—Names

366 Interpretation

In this Part:

body corporate includes an intended body corporate;

company includes an intended company;

registrable body includes an intended registrable body.

367 Available names

(1) Subject to this section, a name is available to a body corporate unless the name:

(a) is reserved or registered in respect of another body corporate; or

(aa) is included on the national business names register in respect of a person other than the body corporate; or

(b) is a name, or a name of a kind, that is declared by the regulations to be unacceptable for registration under this Part.

(2) In comparing for the purposes of paragraph (1)(a) or (aa) a name in respect of which an application for reservation is made with a name that is reserved or registered or included on the national business names register, no regard shall be had to:

(a) any use of the definite article as the first word in one or both of those names; or

(b) the use in one or both of those names of any word, abbreviation or symbol as required by section 368; or

(ba) the use in one or both of those names of:

(i) an abbreviation or symbol referred to in section 371 instead of the equivalent word referred to in the section concerned; or

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(ii) a word referred to in section 371 instead of the equivalent abbreviation or symbol referred to in the section concerned; or

(c) the type, size and case of letters, the size of any numbers or other characters, and any accents, spaces between letters, numbers or characters, and punctuation marks, used in one or both of those names.

(3) A name that would not otherwise be available to a body corporate is available to the body corporate if it is reserved or registered in respect of the body corporate.

(4) A name that would not otherwise be available to a body corporate is available to the body corporate if the Minister has consented in writing to the name being available to the body corporate.

(4A) Subsection (4) does not apply to a name that is not available to a body corporate because it is included on the national business names register in respect of another body corporate.

368 Names of particular classes of companies

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

(2) A no liability company shall have the words “No Liability” or the abbreviation “N.L.” as part of and at the end of its name.

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

369 Use of words “Limited” and “No Liability”

A person shall not carry on business under a name or title of which “Limited” or “No Liability”, or any abbreviation of that word, is the final word or abbreviation, unless the person is duly incorporated with limited liability or no liability, as the case may

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be, under an Australian company law or the law of a country or place outside Australia.

370 Use of word "Proprietary"

(1) A company shall not use the word "Proprietary", or any abbreviation of that word, as part of its name unless the company fulfils the requirements that this Law requires proprietary companies to fulfil.

(2) Subsection (1) does not apply in relation to a company that was originally incorporated before 24 December 1896 under the company law of Victoria.

371 Abbreviations of words included in a company's name

A description of a company is not inadequate or incorrect merely because of one or more of the following:

(a) the use of the abbreviation "Co." or "Coy." instead of the word "Company" in the company's name;
(b) the use of the abbreviation "Pty." instead of the word "Proprietary" in the company's name;
(c) the use of the abbreviation "Ltd." instead of the word "Limited" in the company's name;
(d) the use of the abbreviation "Aust." instead of the word "Australian" in the company's name;
(e) the use of the abbreviation "No." instead of the word "Number" in the company's name;
(f) the use of the symbol "&" instead of the word "and" in the company's name;
(g) the use of the abbreviation "N.L." instead of the words "No Liability" in the company's name;
(h) the use of the abbreviation "A.C.N." instead of the words "Australian Company Number" in the company's name;
(j) the use of any of those words instead of the corresponding abbreviation or symbol in the company's name.

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372 Company with registration number as name

(1) This section applies where the memorandum, or the application for the registration, as the case requires, of a company that it is proposed to incorporate under Division 1 of Part 2.2:
   (a) has been lodged; and
   (b) states that the company's name on registration is to be its registration number.

(2) Subsection 120(2) does not apply in relation to the company.

(3) If the Commission registers the company under section 120, it shall so register it by a name consisting of the following:
   (a) first, the expression "Australian Company Number";
   (b) next, the company's registration number;
   (c) next, the expression or expressions (if any) that section 368 requires to be included in the company's name;

and shall register the name under this Part in respect of the company.

372A Certain names taken to be registered at commencement of Law

(1) Subject to this Part, where a body corporate is taken to be registered as a company under Division 2 of Part 2.2, the body corporate's name is taken to be registered in respect of the body corporate.

(2) Subject to this Part, where a registrable Australian body is taken to be registered under Division 1 of Part 4.1, the body's name is taken to be registered in respect of the body.

(3) Subject to this Part, where a foreign company is taken to be registered under Division 2 of Part 4.1, the foreign company's name is taken to be registered in respect of the foreign company.

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373 Name of intended Division 1 company

(1) A person may lodge an application to reserve a specified name in respect of an intended Division 1 company.

(2) If the name is available to the company, the Commission shall reserve it in respect of the company for 2 months after the date of lodgment of the application.

(3) Where:

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

(b) the Commission registers the company by that name under Division 1 of Part 2.2;

the Commission shall register the name in respect of the company and, where the Commission does so, the name is no longer reserved in respect of the company.

(4) Where:

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

(b) the person who applied for the reservation informs the Commission in writing that the person no longer wishes the name to be reserved in respect of the company;

the Commission shall cancel the reservation.

(5) The reservation of a name under this section in respect of a company does not of itself entitle the company to be registered by that name under Division 1 of Part 2.2.

374 Name by which body corporate proposes to be registered as a company

(1) A body corporate (other than a body corporate that is registered under Division 2 of Part 4.1) may lodge an application to reserve a specified name as the name by which it is proposed that the body be registered as a company under Division 3 of Part 2.2.

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(2) If the name is available to the body, the Commission shall reserve it in respect of the body for 2 months after the date of lodgment of the application.

(4) Subject to this Part, where, at the commencement of this Law:

(a) a registrable Australian body (not being a body to which subsection 372A(2) applies) was registered or incorporated by a particular name under the law of its place of origin; or

(b) a foreign company (not being a foreign company to which subsection 372A(3) applies) was registered or incorporated by a particular name under the law of its place of origin;

then, so long as the registrable Australian body or foreign company continues to be registered or incorporated by that name under that law, the name is taken, except for the purposes of subsection 367(1), to be reserved under this section in respect of the registrable Australian body or foreign company, as the case may be.

(5) Where:

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

(b) the Commission registers the body as a company by that name under Division 3 of Part 2.2;

the Commission shall register the name in respect of the company and, where the Commission does so, the name is no longer reserved in respect of the body.

(6) Where:

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

(b) the body informs the Commission in writing that it no longer wishes the name to be reserved in respect of it;

the Commission shall cancel the reservation.

(7) The reservation of a name under this section in respect of a body corporate does not of itself entitle the body to be registered as a company by that name.

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375 Proposed new name of company

(1) A company may lodge an application to reserve a specified name as the name to which the company proposes to change its name.

(2) If the name is available to the company, the Commission shall reserve it in respect of the company for 2 months after the date of lodgment of the application.

(3) Where:

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

(b) the company changes its name to that name under section 382;

the Commission shall register the new name in respect of the company and, where the Commission does so:

(c) the new name is no longer reserved in respect of the company; and

(d) the Commission shall cancel the registration, in respect of the company, of the name by which the company was registered before it changed its name.

(4) Where:

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

(b) the company informs the Commission in writing that it no longer wishes the name to be reserved in respect of it;

the Commission shall cancel the reservation.

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

376 Name by which registrable body proposes to be registered

(1) A person may lodge an application to reserve a specified name in respect of an intended registrable body that it is proposed will be registered under Part 4.1.

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(2) A registrable body may lodge an application to reserve a specified name as the name by which the body proposes to be registered under Part 4.1.

(3) If the name is available to the registrable body, the Commission shall reserve it in respect of the body for 2 months after the date of lodgment of the application.

(6) Where:

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

(b) the Commission registers the body by that name under Part 4.1;

the Commission shall register the name in respect of the body and, where the Commission does so, the name is no longer reserved in respect of the body.

(7) Where:

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

(b) the person who applied for the reservation of the name informs the Commission in writing that the person no longer wishes the name to be reserved in respect of the body;

the Commission shall cancel the reservation.

(8) The reservation of a name under this section in respect of a registrable body does not of itself entitle the body to be registered by that name under Part 4.1.

377 New name or proposed new name of registered body

(1) A registered body may lodge an application to reserve a specified name as the name to which the body has changed, or proposes to change, its name.

(2) If the name is available to the body, the Commission shall reserve it in respect of the body for 2 months after the date of lodgment of the application.

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(3) Where:

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

(b) whether before or after the name is reserved, the body changed or changes its name to that reserved name;

the Commission shall register the new name in respect of the body and, where the Commission does so:

(c) the new name is no longer reserved in respect of the body; and

(d) the Commission shall cancel the registration, in respect of the body, of the name by which the body was registered before it changed its name.

(4) Where:

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

(b) the body informs the Commission in writing that it no longer wishes the name to be reserved in respect of it;

the Commission shall cancel the reservation.

378 Applications under sections 373 to 377

An application under any of sections 373 to 377, inclusive, shall be in the prescribed form and accompanied by the prescribed documents.

379 Extension of reservation

Where at any time during a period for which a name is reserved (whether or not pursuant to the exercise on any previous occasion or occasions of a power under this section) an application is made to the Commission for an extension of that period, the Commission may extend that period for a further period of 2 months.

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380 Cancellation of registration where body corporate dissolved or de-registered

(1) Where a name is registered in respect of a body corporate and the body is dissolved, the Commission shall cancel the registration.

(2) Where a name is registered in respect of a body corporate and the body ceases to be registered under Part 2.2 or 4.1, the Commission shall cancel the registration of the name in respect of that body.

381 Registration remains in force until cancelled

The registration of a name under a provision of this Part remains in force under that provision until the Commission cancels it.

382 Change of name

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

(2) The Commission shall not approve a change of name of a company under subsection (1) unless the proposed new name is reserved in respect of the company under section 375.

(3) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name that is not available to the company:

- (a) the company may, by special resolution, change its name to a name that is reserved in respect of that company under section 375; and
- (b) if the Commission so directs, the company shall so change its name within 6 weeks after the date of the direction or within such longer period as the Commission allows, unless the Minister, by writing, annuls the direction.

(4) A change of name by a company under this section does not:

- (a) create a new legal entity;

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

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

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

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

383 Omission of "Limited" in names of charitable and other companies

(1) Where the Commission is satisfied that a proposed limited company:

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

(b) will apply its profits (if any) or other income in promoting its objects; and

(c) will prohibit the payment of any dividend to its members;

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

(2) Where the Commission is satisfied:

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

(b) that by its memorandum or articles the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members;

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

(3) A licence may be issued on such conditions as the Commission thinks fit.

(4) Any conditions on which a licence is so issued are binding on the company and shall, if the Commission so directs, be inserted in the memorandum or articles, which may, by special resolution, be altered to give effect to any such direction.

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

(6) Subject to subsection (7), a licence may be revoked by the Commission and, where a licence is so revoked:

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

(b) the company no longer enjoys the exemptions and privileges granted, because of the licence, by or under this Law.

(7) Before a licence is revoked, the Commission shall give to the company notice in writing of the Commission's intention to revoke the licence and shall give the company an opportunity to appear at a hearing before the Commission and make submissions and give evidence in relation to the matter.

(8) Where a licence is revoked, a provision of the memorandum that was inserted in compliance with a condition on which the licence was issued may be altered in the same manner as a provision of that memorandum with respect to the objects of the company may be altered, and section 172 applies to a proposal for such an alteration accordingly.

(9) Where a licence is in force in respect of a company, an alteration of the memorandum or articles, other than an alteration consisting solely of a change of the name of the company, does not have any effect unless:

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(a) a statement setting out the text of the alteration or proposed alteration has been lodged and the alteration or proposed alteration has been approved by the Commission; and
(b) the alteration is made in accordance with the articles and the provisions of this Law.

(10) Where an alteration or proposed alteration of the memorandum or articles of a company, other than an alteration consisting solely of a change of the name of the company, is approved as mentioned in paragraph (9)(a) and the alteration is made as mentioned in paragraph (9)(b), the alteration has effect notwithstanding a failure to obtain any consent or approval required to be obtained by virtue of a provision contained in the licence or a provision inserted in the memorandum or articles for the purposes of subsection (3) or a corresponding law.

(11) Where:
(a) a body corporate is taken to be registered as a company under Division 2 of Part 2.2 of the Corporations Law of this jurisdiction; and
(b) a licence under a previous law of this jurisdiction corresponding to this section was in force in respect of that body corporate immediately before its registration day;

the licence continues in force, subject to this section, as if it had been issued by the Commission under this section.

383A Names reserved within 2 months before commencement

Where, within 2 months before the commencement of this Part, a name was reserved under a corresponding previous law in respect of a body corporate, the name is taken to be reserved under this Part in respect of that body corporate for so much of the period of 2 months after the name was reserved as occurs after that commencement.

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Part 4.3—No liability companies

384 Application of Law to no liability companies

Subject to this Part and except as otherwise expressly provided in this Law, the provisions of this Law relating to public companies, other than Division 2 of Part 5.6 and section 477 (so far as it relates to calls), paragraphs 478(1)(a) and (b), subsections 478(2), (3) and (4) and subsection 483(3), apply in relation to no liability companies.

385 Shareholder not liable to calls or contributions

The acceptance of a share in a no liability company, whether by original allotment or by transfer, does not constitute a contract on the part of the person accepting it to pay any calls in respect of the share or any contribution to the debts and liabilities of the company and such a person is not liable to be sued for any calls or contributions but is not entitled to a dividend upon any such share upon which a call is due and unpaid.

386 Dividends payable on shares irrespective of amount paid up

Subject to any provisions of the articles relating to preferred, deferred or other special classes of shares, dividends that are payable to the shareholders in a no liability company are payable to the persons entitled to those dividends in proportion to the shares held by them respectively, irrespective of the amount paid up or credited as paid up on the shares.

387 Calls: when due

(1) The calls upon shares in a no liability company shall be so made that they are payable at least 14 days after the day on which the call is made, and no subsequent call shall be made until after the end of 7 days after the day on which the call made immediately before it is payable.

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(2) When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment shall, at least 7 days before that day, be sent by post to the holder of shares on which the call is made.

388 Forfeiture of shares

(1) Any share in a no liability company upon which a call is unpaid at the end of 14 days after the day for its payment is thereupon forfeited without any resolution of directors or other proceedings and shall, subject to this Part, be offered for sale by public auction not more than 6 weeks after the day on which the call is payable.

(2) The sale shall be advertised not less than 14 and not more than 21 days before the day appointed for the sale in a daily newspaper circulating generally throughout Australia.

(3) Where a sale is not held because of error or inadvertence, the sale, if it is held in due course as soon as practicable after the discovery of the error or inadvertence, is not invalid.

(4) If there is any failure to comply with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

(5) At any such sale, a share forfeited for non-payment of any call may, if the company in accordance with its articles or by ordinary resolution so determines, be offered for sale and sold credited as paid up to the sum of the amount paid up on the share at the time of forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the day of the sale.

(6) The proceeds of the sale shall be applied in payment of:
   (a) first, the expenses of the sale;
   (b) second, any expenses necessarily incurred in respect of the forfeiture; and
   (c) third, the calls then due and unpaid;

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and the balance (if any) shall be paid to the member whose share has been so sold on the member's delivering to the company the share certificate that relates to the forfeited share.

389 Provisions as to sale of forfeited shares

(1) The directors may, in the case of a share advertised for sale as forfeited for non-payment of a call, fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale.

(2) If a bid at least equal to the reserve price so fixed is not made for the share, the share may be withdrawn from sale

(3) A share so withdrawn from sale or a share for which no bid is received at the sale shall be held by the directors in trust for the company and shall be disposed of in such manner as the company, in accordance with its articles or by resolution, determines, but, at any meeting of the company, no person is entitled to any vote in respect of the shares so held by the directors in trust.

(4) Unless otherwise specifically provided by resolution, the shares to be so disposed of shall first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

390 Shares held by, or in trust for, company

A call does not have any effect upon any forfeited share that is held by or in trust for the company pursuant to this Part, but such a share, when it is re-issued or sold by the company, may be credited as paid up to such amount as the company, in accordance with its articles or by resolution, determines.

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391 Sale of shares on non-payment of calls valid although specific numbers not advertised

(1) When forfeited shares are sold for non-payment of any call, the sale is valid although the specific numbers of the shares are not advertised.

(2) In every advertisement, it is sufficient to give notice of the intended sale of forfeited shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

392 Postponement of sale

(1) An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale or from any date to which the sale has duly been postponed, but so that no such intended sale shall be postponed to a date more than 90 days from the first date fixed for the intended sale.

(2) The date to which the sale is postponed shall, in respect of every postponement, be advertised in a daily newspaper circulating generally in Australia.

393 Redemption of forefeited shares

(1) Notwithstanding anything in this Part, if a share belonging to a person has been forfeited, the person may, at any time up to or on the day immediately before the day upon which it is intended to sell the share, redeem the share by payment to the company of:
  (a) all calls due on the share; and
  (b) if the company so requires:
    (i) a portion, calculated on a pro rata basis, of all expenses incurred by the company in respect of the forfeiture; and
    (ii) a portion, calculated on a pro rata basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

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(2) Upon such a payment, the person is entitled to the share as if the forfeiture had not occurred.

394 Office to be open on day before sale

On the day immediately before the day appointed for the sale of a forfeited share, the registered office of the company shall be open during the hours for which it is by this Law required to be open and accessible to the public.

395 Distribution of surplus on cessation of business on winding up

(1) If, on the winding up of a no liability company, there remains any surplus, the surplus shall be distributed amongst the parties entitled to it in proportion to the shares held by them respectively irrespective of the amounts paid up on the shares.

(2) A member who is in arrears in payment of any call, but whose shares have not been actually forfeited, is not entitled to share in such a distribution until the amount owing in respect of the call has been fully paid and satisfied.

396 Distribution of surplus on cessation of business within 12 months after incorporation

(1) If a no liability company ceases to carry on business within 12 months after its incorporation, shares issued for cash rank on a winding up, to the extent of the capital contributed by subscribing shareholders, in priority to those issued to vendors or promotors, or both, for consideration other than cash.

(2) In subsection (1), ***no liability company*** includes a company that, having been incorporated as a no liability company, changes its status under section 167.

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397 Rights attaching to preference shares issued to promoters

(1) Notwithstanding the constitution of a no liability company, the holders of any shares issued to vendors or promotors are not entitled to any preference on the winding up of the company.

(2) In subsection (1), ***no liability company*** includes a company that, having been incorporated as a no liability company, changes its status under section 167.

398 Restrictions on tribute arrangements

(1) Without the sanction of a special resolution of the company, the directors of a no liability company shall not:

(a) let the whole or proportion of a mine or claim on tribute; or

(b) make any contract for working any land on tribute.

(2) Subsection (1) does not preclude the directors of a no liability company from letting the whole or portion of a mine or claim on tribute, or making any contract for working any land on tribute, for any period not exceeding 3 months, without the sanction of such a resolution, if no such letting or contract has been made within the period of 2 years immediately preceding the proposed letting or contract.

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Part 4.4—Investment companies

399 Interpretation

(1) In this Part, unless the contrary intention appears:

investment company means a corporation in relation to which an order under subsection (3) is in force;

net tangible assets, in relation to a corporation, means tangible property at book values, less total liabilities at book values and less any aggregate amount by which the book values of the marketable securities held by the corporation exceed their market values;

relevant provision of this Part means any of the provisions of sections 400 to 407 (inclusive).

(2) A reference in a relevant provision of this Part to an investment company is a reference to an investment company to which that provision applies.

(3) The Commission may, by order published in the *Gazette*, declare to be an investment company a corporation that:

(a) is:

(i) a company; or

(ii) a registrable Australian body that is, or is required to be, registered under Division 1 of Part 4.1; or

(iii) a foreign company that is, or is required to be, registered as a foreign company under Division 2 of Part 4.1; and

(b) is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

(4) Where the Commission makes an order declaring a corporation to be an investment company, the Commission may specify in the order the relevant provisions of this Part that are to apply to that investment company.

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(5) If, in an order declaring a corporation to be an investment company, the Commission specifies relevant provisions of this Part that are to apply to that corporation, any relevant provisions of this Part that are not so specified do not apply to the corporation.

(6) If the Commission does not, in an order declaring a corporation to be an investment company, specify relevant provisions of this Part that are to apply to the corporation, every provision of this Part applies to the corporation.

(7) Where, immediately before the commencement of this Part, an order made under a previous law corresponding to subsection (3) was in force in relation to a corporation of a kind described in paragraph (3)(a):

(a) the order continues in force, subject to this Part, as if it had been made by the Commission under subsection (3); and

(b) subsections (5) and (6) apply in relation to the order as if the specification in the order of any provisions of the previous corresponding law that applied to the investment company were the specification of the provisions of this Law to which the specified provisions correspond.

400 Restrictions on borrowing by investment companies

(1) An investment company shall not borrow an amount if that amount, or the sum of that amount and amounts previously borrowed by it and not repaid, exceeds an amount equivalent to 50% of its net tangible assets.

(2) An investment company shall not borrow an amount otherwise than by the issue of debentures if that amount, or the sum of that amount and amounts previously borrowed by it otherwise than by the issue of debentures and not repaid, exceeds an amount equivalent to 25% of its net tangible assets.

(3) In subsection (2), ***debentures*** does not include a debenture:

(a) that is redeemable, except at the option of the borrower exercised not earlier than 36 months after the day of issue of the debenture, within less than 5 years after that day; or

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(b) that is issued to a bank as security for an overdraft.

401 Restrictions on investments of investment companies

(1) An investment company shall not invest an amount in a corporation if that amount, or the sum of that amount and amounts previously invested by it in that corporation and still so invested, exceeds an amount equivalent to 10% of the net tangible assets of the investment company.

(2) An investment company shall not hold more than 5% of the subscribed ordinary share capital of a corporation.

402 Restrictions on underwriting by investment companies

(1) An investment company shall not underwrite any issue of authorised securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other authorised securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 40% of its net tangible assets.

(2) An investment company shall not underwrite any issue of non-authorised securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other non-authorised securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 20% of its net tangible assets.

(3) Where:

(a) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened subsection (1) or (2); and

(b) the investment company, as a result of the underwriting, invests in a corporation contrary to section 401;

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the investment company shall be deemed not to have contravened a provision of that section by reason of so investing in the corporation if, at the end of 12 months after so investing:

(c) the amount invested by it in the corporation does not exceed an amount equivalent to 10% of the net tangible assets of the investment company; and

(d) it does not hold more than 5% of the subscribed ordinary share capital of the corporation.

(4) This section applies in relation to sub-underwriting as if the sub-underwriting were underwriting.

(5) In this section:

authorised securities means securities in which trustees are authorised by an Australian law, or by a law of New Zealand, to invest trust funds in their hands;

non-authorised securities means securities other than authorised securities.

403 Special requirements as to articles and prospectus

(1) An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus:

(a) where the memorandum of the company contains a provision stating the objects of the company:

(i) specifies the type of security in which, in accordance with the objects of the company, the company may invest; and

(ii) states whether it is among the objects of the company to invest in Australia or outside Australia or both; or

(b) where the memorandum of the company does not contain a provision stating the objects of the company—states that the memorandum does not contain such a provision.

(2) After the end of 3 months after an investment company has been declared to be an investment company, the investment company shall not borrow or invest any moneys, or underwrite or

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sub-underwrite any issue of securities, unless the articles of the company specify the matters referred to in paragraph (1)(a) or (b), as the case requires.

404 Investment company not to hold shares in other investment companies

(1) An investment company shall not purchase, or (after the end of 3 years after it is declared to be an investment company) hold, shares in, or debentures of:

(a) another investment company; or

(b) a corporation that is incorporated in Australia, in an excluded Territory, or in New Zealand, and in relation to which an order under subsection (2) is in force.

(2) The Commission may, by order published in the *Gazette*, declare a corporation that is engaged primarily in the business of investment in marketable securities for the purpose of revenue or profit and not for the purpose of exercising control to be a corporation to which paragraph (1)(b) applies.

(3) Where, immediately before the commencement of this section, an order made under a previous law corresponding to subsection (2) was in force in relation to a corporation, the order continues in force as if it had been made by the Commission under subsection (2).

405 Investment company not to speculate in commodities

(1) An investment company shall not, for the purpose of profit, buy or sell, or deal in, any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such materials or goods.

(2) Subsection (1) does not apply in relation to:

(a) any buying, selling or dealing by an investment company pursuant to a contract entered into by the investment

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company before it was declared to be an investment company; or

(b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company:

(i) before it was so declared; or

(ii) pursuant to a contract entered into before it was so declared.

406 Balance-sheets and accounts

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

(a) the investments of the company in any securities other than relevant securities; and

(b) the manner in which the investments of the company have been valued.

(2) In subsection (1):

relevant securities means:

(a) government, municipal and other public debentures, stocks and bonds;

(b) shares in a corporation;

(c) options in respect of shares in a corporation; and

(d) debentures of a corporation.

(3) An investment company shall attach to every such balance-sheet:

(a) a complete list of all purchases and sales of securities by the company during the period to which the accounts relate together with a statement of the total amount of brokerage paid or charged by the company during that period and the proportion of that brokerage paid to any stock or share broker, or any employee or nominee of any stock or share broker, who is an officer of the company; and

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(b) a complete list of all the investments of the company as at the date of the balance-sheet showing the descriptions and quantities of those investments.

(4) An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown in that profit and loss account, income from underwriting (including sub-underwriting).

407 Investment fluctuation reserve

(1) The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called the ***investment fluctuation reserve***.

(2) The investment fluctuation reserve is not available for the payment of dividends.

(3) The investment fluctuation reserve is available for the payment of income tax payable in respect of profits made on the sale of securities.

408 Contraventions

(1) If default is made by an investment company in complying with any of the provisions of this Part, the investment company and any officer of the investment company who is in default each contravene this subsection.

(2) A transaction entered into by the company is not invalid by reason only of such a contravention.

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Part 4.5—Financial statements of Australian banks and life insurance corporations

409 Australian banks and life insurance corporations

(1) In this section, ***prescribed corporation*** means:

(a) an Australian bank; or

(b) a body corporate that is registered under the *Life Insurance Act 1945*.

(2) Subject to this section, Parts 3.6 and 3.7 apply in relation to a prescribed corporation that is a company or a subsidiary of a company.

(3) Where, under a law of the Commonwealth relating to banking, a prescribed corporation is required to prepare accounts annually, accounts of the corporation that comply with that law shall be deemed to comply with the provisions of Chapter 3 relating to accounts.

(4) Subsection 304(1) does not apply to or in relation to a prescribed corporation or its directors.

(5) Where, under a law of the Commonwealth relating to life insurance, a prescribed corporation is required to prepare accounts annually, the prescribed corporation and the directors and auditors of the corporation shall not be taken to have contravened such of the provisions of Parts 3.6 and 3.7 as are applicable to it or them by reason only:

(a) that no accounts are laid before the annual general meeting of the corporation other than accounts that:

(i) comply with that law; or

(ii) comply with such conditions as are specified by the Commission; or

(b) that, where accounts that comply with such conditions as are specified by the Commission are laid before the annual

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general meeting of the corporation, an auditor's report to the members on those accounts is not laid before that meeting.

(6) Subsection 332(3) does not apply in relation to the accounts of a prescribed corporation that is registered under the *Life Insurance Act 1945* where those accounts comply with that law.

(7) Where, at the end of a financial year, a company is a group holding company and is, under section 295, required to cause group accounts to be made out, the company and the directors and auditors of the company:

(a) shall not be taken to have contravened the provisions of Chapter 3 relating to group accounts by reason only that the group accounts do not contain, whether separately or consolidated with other accounts, accounts of a prescribed corporation in the group other than accounts that:

(i) in any case—comply with a law of the Commonwealth relating to the preparation of annual accounts of the prescribed corporation; or

(ii) in the case of a prescribed corporation registered under the *Life Insurance Act 1945*—comply with such conditions as are specified by the Commission;

(b) shall not be taken to have contravened section 305 by reason only that a directors' report made under that section relates only to bodies corporate in the group other than prescribed corporations; and

(c) shall not be taken to have contravened section 296 or 332 by reason only that that section is not complied with in relation to prescribed corporations in the group that are registered under the *Life Insurance Act 1945*.

(8) A prescribed corporation shall not be taken to have contravened section 315 in relation to an annual general meeting by reason only that it does not send to a person entitled to receive notice of general meetings of the company accounts or documents referred to in that section other than accounts and documents so referred to that, in compliance with the provisions of Part 3.6, whether by the

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operation of this section or otherwise, are to be laid before that annual general meeting.

(9) Where a prescribed corporation registered under the *Life Insurance Act 1945* does not lay before its annual general meeting accounts and an auditor's report that comply with that Act, it shall lodge a copy of those accounts and a copy of that report on or before a day at most 9 months after the end of the period to which they relate.

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The Corporations Law—Section 410

Chapter 5—External administration

Part 5.1—Arrangements and reconstructions

410 Interpretation

A reference in this Part, in relation to a Part 5.1 body, to the directors is a reference to the directors of the body or any one or more of them.

411 Administration of compromises etc.

(1) Where a compromise or arrangement is proposed between a Part 5.1 body and its creditors or any class of them or between a Part 5.1 body and its members or any class of them, the Court may, on the application in a summary way of the body or of any creditor or member of the body, or, in the case of a body being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors or of the members of the body or class of members to be convened in such manner, and to be held in such place or places (in this jurisdiction or elsewhere), as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by paragraph 412(1)(a) to accompany notices of the meeting or meetings.

(2) The Court shall not make an order pursuant to an application under subsection (1) unless:

(a) 14 days notice of the hearing of the application, or such lesser period of notice as the Court or the Commission permits, has been given to the Commission; and

(b) the Court is satisfied that the Commission has had a reasonable opportunity:

(i) to examine the terms of the proposed compromise or arrangement to which the application relates and a draft explanatory statement relating to the proposed compromise or arrangement; and

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(ii) to make submissions to the Court in relation to the proposed compromise or arrangement and the draft explanatory statement.

(3) In subsection (2), ***draft explanatory statement***, in relation to a proposed compromise or arrangement between a body and its creditors or any class of them or between a body and its members or any class of them, means a statement:

(a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the directors of the body, whether as directors, as members or creditors of the body or otherwise, and the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member of the body whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the body and has not previously been disclosed to the creditors or members of the body.

(3A) In considering whether to make an order under subsection (1) or (1A) for a meeting to be held in another jurisdiction, the Court must have regard to where the creditors or members, or the creditors or members included in the class concerned, as the case requires, reside.

(4) A compromise or arrangement is binding on the creditors, or on a class of creditors, or on the members, or on a class of members, as the case may be, of the body and on the body or, if the body is in the course of being wound up, on the liquidator and contributories of the body, if, and only if:

(a) at a meeting convened in accordance with an order of the Court under subsection (1):

(i) in the case of a compromise or arrangement between a body and its creditors or a class of creditors—the

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compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the company amount in the aggregate to at least 75% of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and

(ii) in the case of a compromise or arrangement between a body and its members or a class of members—the compromise or arrangement is agreed to by a majority in number of the members, or of the members included in that class of members, present and voting, either in person or by proxy, being, in the case of a body having a share capital, a majority whose shares have nominal values that amount, in the aggregate, to at least 75% of the total of the nominal values of all the shares of the members present and voting in person or by proxy, or of the members included in that class present and voting in person or by proxy, as the case may be; and

(b) it is approved by order of the Court.

(5) Where the Court orders 2 or more meetings of creditors or of a class of creditors, or 2 or more meetings of members or of a class of members, to be held in relation to the proposed compromise or arrangement:

(a) in the case of meetings of creditors—the meetings shall, for the purposes of subsection (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly; or

(b) in the case of meetings of members—the meetings shall, for the purposes of subsection (4), be deemed together to constitute a single meeting and the votes in favour of the

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proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

(6) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(7) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Law between a body and its creditors or any class of them or between a body and its members or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person:

(a) is a mortgagee of any property of the body;

(b) is an auditor or an officer of the body;

(c) is an officer of a body corporate that is a mortgagee of property of the body;

(d) is not a registered liquidator;

(e) is an officer of a body corporate related to the body; or

(f) unless the Commission directs in writing that this paragraph does not apply in relation to the person in relation to the body—has at any time within the last 12 months been an officer or promoter of the body or of a related body corporate.

(8) Paragraph (7)(d) does not apply in relation to a body corporate authorised by or under a law of this jurisdiction to administer the compromise or arrangement concerned.

(8A) Subsection (7) does not disqualify a person from administering a compromise or arrangement under an appointment validly made before the commencement of this section.

(9) Where a person is or persons are appointed by, or under a power given by, the terms of a compromise or arrangement, to administer the compromise or arrangement:

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The Corporations Law—Section 411

(a) section 425, subsections 427(2) and (4) and sections 428, 432 and 434 apply in relation to that person or those persons as if:
   (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of property of the body; and
   (ii) a reference in any of those sections or subsections to a receiver, or to a receiver of property, of a corporation were a reference to that person or to those persons; and

(b) section 536 applies in relation to that person or those persons as if:
   (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the body; and
   (ii) a reference in that section to a liquidator were a reference to that person or to those persons.

(10) An order of the Court made for the purposes of paragraph (4)(b) does not have any effect until an office copy of the order is lodged with the Commission, and upon being so lodged, notwithstanding subsection 171(5), the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

(11) Subject to subsection (12), a copy of every order of the Court made for the purposes of paragraph (4)(b) shall be annexed to every copy of the memorandum of the body issued after the order has been made or, in the case of a body not having a memorandum, to every copy so issued of the constitution of the body.

(12) The Court may, by order, exempt a body from compliance with subsection (11) or determine the period during which the body shall comply with that subsection.

(13) Where a compromise or arrangement referred to in subsection (1) (whether or not for the purposes of or in connection with a scheme for the reconstruction of a body or bodies or the amalgamation of

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any 2 or more bodies) has been proposed, the directors of the body shall:

(a) if a meeting of the members of the body by resolution so directs—instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and

(b) if a report or reports is or are obtained pursuant to paragraph (a)—make the report or reports available at the registered office of the body for inspection by the shareholders and creditors of the body at least 7 days before the day of the meeting ordered by the Court to be convened as provided in subsection (1).

(14) If default is made in complying with subsection (11), the body contravenes this subsection.

(15) If default is made in complying with subsection (13), each director of the body contravenes this subsection.

(16) Where no order has been made or resolution passed for the winding up of a Part 5.1 body and a compromise or arrangement has been proposed between the body and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the body or of any member or creditor of the body, restrain further proceedings in any action or other civil proceeding against the body except by leave of the Court and subject to such terms as the Court imposes.

(17) The Court shall not approve a compromise or arrangement under this section unless:

(a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Chapter 6; or

(b) there is produced to the Court a statement in writing by the Commission stating that the Commission has no objection to the compromise or arrangement;

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but the Court need not approve a compromise or arrangement merely because a statement by the Commission stating that the Commission has no objection to the compromise or arrangement has been produced to the Court as mentioned in paragraph (b).

412 Information as to compromise with creditors

(1) Where a meeting is convened under section 411, the body shall:

(a) with every notice convening the meeting that is sent to a creditor or member, send a statement (in this section called the ***explanatory statement***):

(i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors, whether as directors, as members or creditors of the body or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members; and

(b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the explanatory statement.

(2) In the case of a creditor whose debt does not exceed $200, paragraph (1)(a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the body shall as soon as practicable comply with the request.

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(3) Where the compromise or arrangement affects the rights of debenture holders, the explanatory statement shall specify any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the body or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

(4) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor or member entitled to attend the meeting shall, on making application in that matter, be furnished by the body free of charge with a copy of the explanatory statement.

(5) Each person who is a director or trustee for debenture holders shall give notice to the body of such matters relating to the person as are required to be included in the explanatory statement.

(6) In the case of a compromise or arrangement that is not, or does not include, a compromise or arrangement between a Part 5.1 body and its creditors or any class of them, the body shall not send out an explanatory statement pursuant to subsection (1) unless a copy of that statement has been registered by the Commission.

(7) Where an explanatory statement sent out under subsection (1) is not required by subsection (6) to be registered by the Commission, the Court shall not make an order approving the compromise or arrangement unless it is satisfied that the Commission has had a reasonable opportunity to examine the explanatory statement and to make submissions to the Court in relation to that statement.

(8) Where a copy of an explanatory statement is lodged with the Commission for registration under subsection (6), the Commission shall not register the copy of the statement unless the statement appears to comply with this Law and the Commission is of the opinion that the statement does not contain any matter that is false in a material particular or materially misleading in the form or context in which it appears.

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(9) Where a body contravenes this section, a person involved in the contravention contravenes this subsection.

(10) It is a defence to a prosecution for a contravention of this section if it is proved that the contravention was due to the failure of a person (other than the defendant), being a director of the body or a trustee for debenture holders of the body, to supply for the purposes of the explanatory statement particulars of the person's interests.

413 Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies

(1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of a Part 5.1 body or Part 5.1 bodies or the amalgamation of 2 or more Part 5.1 bodies and that, under the scheme, the whole or any part of the undertaking or of the property of a body concerned in the scheme (in this section called the ***transferor body***) is to be transferred to a company (in this section called the ***transferee company***), the Court may, either by the order approving the compromise or arrangement or by a later order, provide for all or any of the following matters:

(a) the transfer to the transferee company of the whole or a part of the undertaking and of the property or liabilities of the transferor body;

(b) the allotting or appropriation by the transferee company of shares, debentures, policies or other interests in that company that, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor body;

(d) if the transferor body is a company—the dissolution, without winding up, of the transferor body;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

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(f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;

(g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free, in the case of any particular property if the order so directs, from any charge that is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, each body to which the order relates shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order.

(4) In this section:

liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously;

property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

414 Acquisition of shares of shareholders dissenting from scheme or contract approved by majority

(1) In this section:

dissenting shareholder, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer his, her or its shares in accordance with the scheme or contract;

excluded shares, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a company,

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means shares in that class that, when the offer relating to the scheme or contract is made, are held by:

(a) in any case—the person or a nominee of the person; or

(b) if the person is a body corporate—a subsidiary of the body.

(2) Where a scheme or contract (not being a scheme or contract arising out of the making of takeover offers, or a takeover announcement, under Chapter 6) involving a transfer of shares in a class of shares in a company (in this section called the ***transferor company***) to a person (in this section called the ***transferee***) has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least nine-tenths in nominal value of the shares included in that class of shares (other than excluded shares), the transferee may, within 2 months after the offer has been so approved, give notice as prescribed to a dissenting shareholder that the transferee wishes to acquire the shares held by that shareholder.

(3) Where such a notice is given, then, unless the Court orders otherwise on an application by a dissenting shareholder made within one month after the day on which the notice was given or within 14 days after a statement is supplied under subsection (7) to a dissenting shareholder, whichever is the later, the transferee is entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(4) Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the end of one month after the date on which the notice is given under subsection (2) or 14 days after a statement is supplied under subsection (7), whichever is the later, which of those terms he, she or it prefers and, if he, she or it fails to make the election within the time allowed by this subsection, the transferee may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

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(5) Notwithstanding subsections (3) and (4), where the nominal value of the excluded shares exceeds one-tenth of the aggregate nominal value of the excluded shares and the shares (other than excluded shares) to be transferred under the scheme or contract, those subsections do not apply unless:

(a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract together hold at least nine-tenths in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least three-quarters in number of the holders of those shares.

(6) For the purposes of paragraph (5)(b), 2 or more persons registered as holding shares jointly shall be counted as one person.

(7) When a notice is given under subsection (2), the dissenting shareholder may, by written notice given to the transferee within one month after the day on which the notice was given under subsection (2), ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

(8) Where a notice is given under subsection (7), the transferee shall comply with it.

(9) Where, under a scheme or contract referred to in subsection (2), the transferee becomes beneficially entitled to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a body corporate, a body corporate related to the transferee is beneficially entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned, then:

(a) the transferee shall, within one month after the date on which he, she or it becomes beneficially entitled to those shares (unless in relation to the scheme or contract he, she or it has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares

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included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under subsection (2); and

(b) such a holder may, within 3 months after the giving of the notice to him, her or it by notice to the transferee, require the transferee to acquire his, her or its share and, where alternative terms were offered to the approving shareholders, elect which of those terms he, she or it will accept.

(10) Where a shareholder gives notice under paragraph (9)(b) with respect to his, her or its shares, the transferee is entitled and bound to acquire those shares:

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him, her or it and, where alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or where he, she or it has not so elected, for whichever of the terms the transferee determines; or

(b) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, thinks fit to order.

(11) Subsections (12) and (13) apply where a notice has been given under subsection (1) unless the Court, on an application made by the dissenting shareholder, orders to the contrary.

(12) The transferee shall, within 14 days after:

(a) the end of one month after the day on which the notice was given;

(b) the end of 14 days after a statement under subsection (7) is supplied; or

(c) if an application has been made to the Court by a dissenting shareholder—the application is disposed of;

whichever last happens:

(d) send a copy of the notice to the transferor company together with an instrument of transfer that relates to the shares that the transferee is entitled to acquire under this section and is executed, on the shareholder's behalf, by a person appointed

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by the transferee and, on the transferee's own behalf, by the transferee; and

(e) pay, allot or transfer to the transferor company the consideration for the shares.

(13) When the transferee has complied with subsection (12), the transferor company shall register the transferee as the holder of the shares.

(14) All sums received by the transferor company under this section shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

(15) Where a sum or other property received by a company under this section or a corresponding law has been held in trust by the company for a person for at least 2 years (whether or not that period began before the commencement of this Part), the company shall, before the end of 10 years after the day on which the sum was paid, or the consideration was allotted or transferred, to the company, pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Minister to be dealt with under Part 9.7.

415 Notification of appointment of scheme manager and power of Court to require report

(1) Within 14 days after being appointed to administer a compromise or arrangement approved under this Part, a person shall lodge a notice in writing of the appointment.

(2) Where an application is made to the Court under this Part in relation to a proposed compromise or arrangement, the Court may:

(a) before making any order on the application, require the Commission or another person specified by the Court to give to the Court a report as to the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has

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been proposed, the conduct of the officers of the body or bodies concerned and any other matters that, in the opinion of the Commission or that person, ought to be brought to the attention of the Court;

(b) in deciding the application, have regard to anything contained in the report; and

(c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

415A Enforcement of orders made in other jurisdictions

(1) Where:

(a) the Federal Court makes an order under subsection 411(1) or (1A) of the Corporations Law of another jurisdiction; or

(b) the Supreme Court of another jurisdiction makes an order under subsection 411(1) or (1A) of the Corporations Law of any jurisdiction; or

(c) the Supreme Court of this jurisdiction makes an order under subsection 411(1) or (1A) of the Corporations Law of another jurisdiction;

the order has effect, and may be enforced in all respects, in this jurisdiction as if it were an order made under subsection 411(1) or (1A) of this Law, in relation to a Part 5.1 body, by:

(d) if paragraph (a) applies—the Federal Court; or

(e) if paragraph (b) or (c) applies—the Supreme Court of this jurisdiction.

(2) A compromise or arrangement that is binding on the creditors, or a class of creditors, of a body corporate because of subsection 411(4) of the Corporations Law of another jurisdiction is also binding on the creditors of the body, or the creditors in that class, whose debts are recoverable by action in a court of this jurisdiction.

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Part 5.2—Receivers and managers

416 Interpretation

In this Part, unless the contrary intention appears:

officer, in relation to a registered foreign company, includes a local agent of the foreign company;

property, in relation to a corporation, means property:
- (a) in the case of a company—within or outside Australia; or
- (b) in the case of a registered foreign company—within Australia or an external Territory; or
- (c) otherwise—within this jurisdiction;

receiver, in relation to property of a corporation, includes a receiver and manager.

417 Application of Part

Except so far as the contrary intention appears, this Part applies in relation to a receiver of property of a corporation who is appointed after the commencement of this section, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

418 Persons not to act as receivers

(1) A person is not qualified to be appointed, and shall not act, as receiver of property of a corporation if the person:
- (a) is a mortgagee of property of the corporation;
- (b) is an auditor or an officer of the corporation;
- (c) is an officer of a body corporate that is a mortgagee of property of the corporation;
- (d) is not a registered liquidator;
- (e) is an officer of a body corporate related to the corporation; or

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(f) unless the Commission directs in writing that this paragraph does not apply in relation to the person in relation to the corporation—has at any time within the last 12 months been an officer or promoter of the corporation or of a related body corporate.

(2) In subsection (1):

officer, in relation to a body corporate, does not include a receiver, appointed under an instrument whether before or after the commencement of this section, of property of the body.

(3) Paragraph (1)(d) does not apply in relation to a body corporate authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the corporation concerned.

(4) Nothing in this section prevents a person from acting as receiver of property of a Division 2 company under an appointment validly made before the company's registration day.

419 Liability of receiver

(1) A receiver, or any other authorised person, who, whether as agent for the corporation concerned or not, enters into possession or assumes control of any property of a corporation for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to the person's rights against the corporation or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) Where:

(a) a person (in this subsection called the ***controller***) enters into possession or assumes control of property of a corporation;

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(b) the controller purports to have been properly appointed as a receiver in respect of that property under a power contained in an instrument, but has not been properly so appointed; and

(c) civil proceedings in an Australian court arise out of an act alleged to have been done by the controller;

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that:

(d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and

(e) a person who purported to appoint the controller as receiver be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

420 Powers of receiver

(1) Subject to this section, a receiver of property of a corporation has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

(2) Without limiting the generality of subsection (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a corporation has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed:

(a) to enter into possession and take control of property of the corporation in accordance with the terms of that order or instrument;

(b) to lease, let on hire or dispose of property of the corporation;

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(c) to grant options over property of the corporation on such conditions as the receiver thinks fit;

(d) to borrow money on the security of property of the corporation;

(e) to insure property of the corporation;

(f) to repair, renew or enlarge property of the corporation;

(g) to convert property of the corporation into money;

(h) to carry on any business of the corporation;

(j) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the corporation;

(k) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the corporation;

(m) to draw, accept, make and indorse a bill of exchange or promissory note;

(n) to use a seal of the corporation;

(o) to engage or discharge employees on behalf of the corporation;

(p) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver;

(q) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person;

(r) where a debt or liability is owed to the corporation—to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;

(s) where the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the corporation:

  (i) in the name of the corporation, to make a call in respect of money unpaid on shares in the corporation (whether on account of the nominal value of the shares or by way of premium); or

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(ii) upon the giving of a proper indemnity to a liquidator of the corporation—in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the corporation;

(t) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise;

(u) to make or defend an application for the winding up of the corporation; and

(w) to refer to arbitration any question affecting the corporation.

(3) The conferring by this section on a receiver of powers in relation to property of a corporation does not affect any rights in relation to that property of any other person other than the corporation.

(4) In this section, a reference, in relation to a receiver, to property of a corporation is, unless the contrary intention appears, a reference to the property of the corporation in relation to which the receiver was appointed.

421 Duties of receiver with respect to bank accounts and accounting records

(1) A receiver of property of a corporation shall:

(a) open and maintain a bank account bearing the receiver's own name, the title "receiver" and the name of the corporation;

(b) within 3 business days after money of the corporation comes under the receiver's control, pay that money into the account referred to in paragraph (a);

(c) ensure that the account referred to in paragraph (a) does not contain any moneys other than the moneys of the corporation that come under the receiver's control; and

(d) keep such accounting records as correctly record and explain all transactions entered into by the receiver as receiver.

(2) Any director, creditor or member of a corporation may, unless the Court otherwise orders, personally or by an agent, inspect records kept by a receiver of property of the corporation for the purposes of paragraph (1)(d).

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The Corporations Law—Section 422

422 Reports by receiver

(1) If it appears to the receiver of property of a corporation that:

(a) a past or present officer, or a member, of the corporation may have been guilty of an offence in relation to the corporation; or

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the corporation:

(i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property is within or outside Australia) of the corporation; or

(ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the corporation;

the receiver shall:

(c) lodge as soon as practicable a report about the matter; and

(d) give to the Commission such information, and such access to and facilities for inspecting and taking copies of any documents, as the Commission requires.

(2) The receiver may also lodge further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the Commission.

(3) If it appears to the Court:

(a) that a past or present officer, or a member, of a corporation in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in paragraph (1)(a) in relation to the corporation; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding up of a corporation in respect of property of which a receiver has been appointed has engaged in conduct referred to in paragraph (1)(b) in relation to the corporation;

and that the receiver has not lodged a report about the matter, the Court may, on the application of a person interested in the

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appointment of the receiver or of its own motion, direct the receiver to lodge such a report.

423 Supervision of receiver

(1) If:

(a) it appears to the Court or to the Commission that a receiver of property of a corporation has not faithfully performed or is not faithfully performing the receiver's duties or has not observed or is not observing:

(i) a requirement of the order by which, or the instrument under which, the receiver was appointed;

(ii) a requirement of the Court; or

(iii) a requirement of this Law, of the regulations or of the rules; or

(b) a complaint is made to the Court or to the Commission by any person with respect to the conduct of a receiver of property of a corporation in connection with the performance of the receiver's duties;

the Court or the Commission, as the case may be, may inquire into the matter and, where the Court or Commission so inquires, the Court may take such action as it thinks fit.

(2) The Commission may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the receiver and the Court may order the receiver to make good any loss that the estate of the corporation has sustained thereby and may make such other order or orders as it thinks fit.

(3) The Court may at any time require a receiver of property of a corporation to answer any inquiry in relation to the performance of the receiver's duties as receiver and may examine the receiver or any other person on oath concerning the performance of the receiver's duties and may direct an investigation to be made of the receiver's books.

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424 Receiver may apply to Court

A receiver of property of a corporation appointed under a power contained in an instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of the receiver's functions.

425 Power of Court to fix remuneration of receiver

(1) The Court may, on application by the liquidator or the official manager of a corporation, or by the Commission, by order fix the amount to be paid by way of remuneration to any person who, under a power contained in an instrument, has been appointed as receiver of property of the corporation.

(2) The power of the Court to make an order under this section:

(a) extends to fixing the remuneration for any period before the making of the order or the application for the order;

(b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and

(c) if the receiver has been paid or has retained for the receiver's remuneration for any period before the making of the order any amount in excess of that fixed for that period—extends to requiring the receiver or the receiver's personal representatives to account for the excess or such part of the excess as is specified in the order.

(3) The power conferred by paragraph (2)(c) shall not be exercised in respect of 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.

(4) The Court may from time to time, on an application made by the liquidator, the official manager, the receiver or the Commission, vary or amend an order made under this section.

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426 Receiver to enjoy qualified privilege in certain circumstances

A receiver of property of a corporation has qualified privilege in respect of:

(a) a matter contained in a report that the receiver lodges under section 422; or

(b) a comment that the receiver makes under paragraph 429(2)(c).

427 Notification of appointment of receiver

(1) A person who obtains an order for the appointment of a receiver of property of a corporation, or who appoints such a receiver under a power contained in an instrument, shall:

(a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case may be; and

(b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case may be, to be published in the *Gazette*.

(2) Within 14 days after being appointed as a receiver of property of a corporation, a person shall lodge a notice in the prescribed form of the address of the person's office.

(3) A receiver of property of a corporation shall, within 14 days after a change in the situation of the receiver's office, lodge notice in the prescribed form of the change.

(4) Where a person appointed as receiver of property of a corporation ceases to act as such, the person shall:

(a) within 7 days after so ceasing to act, lodge notice that the person has so ceased to act; and

(b) within 21 days after so ceasing to act, cause notice that the person has so ceased to act to be published in the *Gazette*.

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428 Statement that receiver appointed

Where a receiver of property (whether within or outside this jurisdiction or within or outside Australia) of a corporation has been appointed, the corporation shall set out, in every public document, and in every eligible negotiable instrument, of the corporation, after the name of the corporation where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

429 Provisions as to information where receiver appointed

(1) In this section:

reporting officer, in relation to a corporation in respect of property of which a receiver has been appointed, means a person who is:

(a) in the case of a company or registered Australian corporation—a director or secretary of the company or registered Australian corporation; or

(b) in the case of a foreign company—a local agent of the foreign company;

on the day of the appointment.

(2) Where a receiver of property of a corporation is appointed:

(a) the receiver shall serve on the corporation as soon as practicable notice of the appointment;

(b) within 14 days after the corporation receives the notice, the reporting officers shall make out and submit to the receiver a report in the prescribed form about the affairs of the corporation as at the day of the appointment; and

(c) the receiver shall, within one month after receipt of the report:

(i) lodge a copy of the report and a notice setting out any comments the receiver sees fit to make relating to the report or, if the receiver does not see fit to make any comment, a notice stating that the receiver does not see fit to make any comment;

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(ii) send to the corporation a copy of the notice lodged in accordance with subparagraph (i); and

(iii) if the appointment was by or on behalf of the holders of debentures of the corporation, send to the trustees (if any) for those holders a copy of the report and a copy of the notice lodged in accordance with subparagraph (i).

(3) Where notice has been served on a corporation under paragraph (2)(a), the reporting officers may apply to the receiver or to the Court to extend the period within which the report is to be submitted and:

(a) if application is made to the receiver—if the receiver believes that there are special reasons for so doing, the receiver may, by notice in writing given to the reporting officers, extend that period until a specified day; and

(b) if application is made to the Court—if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

(4) As soon as practicable after granting an extension under paragraph (3)(a), the receiver shall lodge a copy of the notice.

(5) As soon as practicable after the Court grants an extension under paragraph (3)(b), the reporting officers shall lodge a copy of the order.

(6) Subsections (2), (3) and (4) do not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where subsection (2) applies to a receiver who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (2)(b) and (c) and subsections (3) and (4) to the receiver, subject to subsection (7), include references to the receiver's successor and to any continuing receiver.

(7) Where a corporation is being wound up, this section and section 430 apply even if the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

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The Corporations Law—Section 430

430 Receiver may require reports

(1) A receiver of property of a corporation may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to the receiver, a report, containing such information as is specified in the notice as to the affairs of the corporation or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

(a) persons who are or have been officers of the corporation;

(b) where the corporation was incorporated within one year before the date of the receiver's appointment—persons who have taken part in the formation of the corporation;

(c) persons who are employed by the corporation or have been so employed within one year before the date of the receiver's appointment and are, in the opinion of the receiver, capable of giving the information required;

(d) persons who are, or have been within one year before the date of the receiver's appointment, officers of, or employed by, a corporation that is, or within that year was, an officer of the corporation.

(2) The receiver may, in a notice under subsection (1), specify the information that the receiver requires as to affairs of a corporation by reference to information required by this Law to be included in any other report, statement or notice under this Law.

(3) A person making a report and verifying it as required by subsection (1) shall, subject to the regulations, be allowed, and shall be paid by the receiver (or the receiver's successor) out of the receiver's receipts, such costs and expenses incurred in and about the preparation and making of the report and the verification of the report as the receiver (or the receiver's successor) considers reasonable.

(4) A person shall comply with a requirement made under subsection (1).

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(5) A reference in this section to the receiver's successor includes a reference to a continuing receiver.

431 Receiver may inspect books

A receiver of property of a corporation is entitled to inspect at any reasonable time any books of the corporation that relate to that property and a person shall not fail to allow the receiver to inspect such books at such a time.

432 Lodging of accounts of receiver

(1) A receiver of property of a corporation shall, within one month after the end of the period of 6 months (or such lesser period as the receiver determines) from the date of the receiver's appointment and of every subsequent period of 6 months during which the receiver acts as receiver, and within one month after the receiver ceases to act as receiver, lodge an account in the prescribed form showing:

(a) the receiver's receipts and payments during each such period or, where the receiver ceases to act as receiver, during the period from the end of the period to which the last account related or from the date of the receiver's appointment, as the case requires, up to the date of the receiver so ceasing to act;

(b) except in the case of the first account lodged under this subsection—the aggregate amount of receipts and payments during all preceding periods since the receiver's appointment; and

(c) where the receiver has been appointed under a power contained in an instrument—the amount (if any) owing under that instrument:

(i) in the case of the first account—at the time of the receiver's appointment and at the end of the period to which the account relates; and

(ii) in the case of any other account—at the end of the period to which the account relates;

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and the receiver's estimate of the total value, at the end of the period to which the account relates, of the property of the corporation that is subject to the instrument.

(2) The Commission may, of its own motion or on the application of the corporation or a creditor of the corporation, cause the accounts lodged in accordance with subsection (1) to be audited by a registered company auditor appointed by the Commission and, for the purpose of the audit, the receiver shall furnish the auditor with such books and information as the auditor requires.

(3) Where the Commission causes the accounts to be audited on the request of the corporation or a creditor, the Commission may require the corporation or creditor, as the case may be, to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the Commission and the Commision may if it thinks fit make an order declaring that, for the purposes of subsection 419(1), those costs shall be deemed to be a debt incurred by the receiver in the course of the receivership for services rendered and, where such an order is made, the receiver is liable for those costs in accordance with section 419 as if they were such a debt.

(5) A person shall comply with a requirement made under this section.

433 Payment of certain debts, out of property subject to floating charge, in priority to claims under charge

(1) In this section:

registered body does not include a registrable local body.

(2) This section applies where:

(a) a receiver is appointed on behalf of the holders of any debentures of a company or registered body that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a company or registered body, of any property comprised in or subject to a floating charge; and

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(b) at the date of the appointment or of the taking of possession or assumption of control (in this section called the ***relevant date***):
   (i) the company or registered body has not commenced to be wound up voluntarily; and
   (ii) the company or registered body has not been ordered to be wound up by the Court.

(3) In the case of a company, the receiver or other person taking possession or assuming control of property of the company shall pay, out of the property coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:
   (a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 562;
   (b) next, if an auditor of the company had applied to the Commission under subsection 329(6) for consent to his, her or its resignation as auditor and the Commission had refused that consent before the relevant date—the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;
   (c) subject to subsections (6) and (7), next, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 556(1)(e), (g) or (h) or section 560.

(4) In the case of a registered body, the receiver or other person taking possession or assuming control of property of the registered body shall pay, out of the property of the registered body coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:
   (a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 562;
   (b) next, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 556(1)(e), (g) or (h) or section 560.

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(5) The receiver or other person taking possession or assuming control of property shall pay debts and amounts payable pursuant to paragraph (3)(c) or (4)(b) in the same order of priority as is prescribed by Division 6 of Part 5.6 in respect of those debts and amounts.

(6) In the case of a company, if an auditor of the company had applied to the Commission under subsection 329(6) for consent to his, her or its resignation as auditor and the Commission had, before the relevant date, refused that consent, a receiver shall, when property comes to the receiver's hands, before paying any debt or amount referred to in paragraph (3)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subsection.

(7) If an auditor of the company applies to the Commission under subsection 329(6) for consent to his, her or its resignation as auditor and, after the relevant date, the Commission refuses that consent, the receiver shall, in relation to property that comes into the receiver's hands after the refusal, before paying any debt or amount referred to in paragraph (3)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subsection.

(8) A receiver shall make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subsection (6) or (7) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with the estimate.

(9) For the purposes of this section the references in Division 6 of Part 5.6 to the relevant date shall be read as references to the date

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of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

434 Enforcement of duty of receiver to make returns

(1) If a receiver of property of a corporation:

(a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on the receiver, by any member or creditor of the corporation or trustee for debenture holders, of a notice requiring the receiver to do so; or

(b) who has been appointed under a power contained in an instrument has, after being required at any time by the liquidator of the corporation so to do, failed to render proper accounts of, and to vouch, the receiver's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator;

the Court may make an order directing the receiver to make good the default within such time as is specified in the order.

(2) An application under subsection (1) may be made:

(a) if paragraph (1)(a) applies—by a member or creditor of the corporation or by a trustee for debenture holders; and

(b) if paragraph (1)(b) applies—by the liquidator of the corporation.

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Part 5.3—Official management

435 Interpretation

(1) In this Part:

special notice, in relation to a meeting of creditors of a company, means notice of the meeting sent by post to each of the creditors and posted not less than 14 days and not more than 21 days before the date of the meeting.

(2) For the purposes of this Part, a special resolution shall be deemed to have been passed at a meeting of creditors of a company if the resolution is agreed to by a majority in number of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to at least 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, at the meeting.

(3) A creditor of a company, being a related body corporate, is not entitled to vote as a creditor on a special resolution moved at a meeting of creditors of the company convened under this Part.

(4) Subject to subsection (3), nothing in this Part affects the rights of a secured creditor of the company.

436 Power of company to call meeting of creditors to appoint official manager

(1) Where it is resolved by the majority of the directors of a company present at a meeting of the directors specially convened for the purpose that the company is unable to pay its debts as and when they become due and payable, the company may, or, where the company is requested in writing to do so by a creditor of the company who has a judgment against the company unsatisfied to the extent of at least $1,000, the company shall, convene a meeting of its creditors in accordance with this section for the purpose of

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placing the company under official management and appointing an official manager of the company.

(2) A meeting of creditors of a company for the purposes of this section shall be convened by giving notice of the meeting in accordance with this section to the creditors of the company.

(3) The notice referred to in subsection (2) shall be given by the company within:

(a) 35 days after the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1); or

(b) such further period as the Commission allows where, in the opinion of the Commission, the company would not be able to give the notice within the time specified in paragraph (a).

(4) The company shall, at least 7 days before the end of the period within which the notice referred to in subsection (2) is required to be given, prepare a report in the prescribed form as to the affairs of the company made up to a date not earlier than the date of the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1).

(5) Each director of the company shall furnish to the company a certificate under his or her hand certifying whether the report prepared in accordance with subsection (4) does or does not, to the best of his or her knowledge, information and belief, give a true and fair view of the state of affairs of the company as at the date to which it is made up and, subject to subsection (8), a company shall be deemed to have failed to comply with subsection (4) unless each director has furnished to the company such a certificate.

(6) Where a director certifies that to the best of his or her knowledge, information and belief the report does not give a true and fair view of the state of affairs of the company, the director shall also state in the certificate the grounds on which he or she formed that opinion.

(7) A director of a company shall not furnish a certificate under subsection (5) concerning a report prepared in accordance with subsection (4) unless he or she has made such enquiries as are

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reasonably necessary to determine whether the report does or does not give a true and fair view of the state of affairs of the company as at the date to which is made up.

(8) Where the Commission is satisfied that it is impracticable for a company to obtain the certificate referred to in subsection (5) from a director of the company, the Commission may exempt the company from the obligation to obtain the certificate from that director.

(9) For the purposes of subsection (2), notice of a meeting of creditors of a company shall be given by:

(a) sending by post to each of the creditors a notice, in the prescribed form; and

(b) publishing a copy of that notice in each State, Territory or excluded Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1), in a daily newspaper circulating generally in that State, Territory or excluded Territory, as the case may be;

not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting.

(10) Subject to subsection (11), the company shall attach to every notice posted in accordance with subsection (9):

(a) a summary of the affairs of the company, in the prescribed form;

(b) a notice that the report that the company is required by subsection (4) to prepare is available for inspection at the registered office of the company and that a copy of the report will be sent by post to any creditor who makes a request in writing for a copy of the report or will be delivered to any creditor who attends at the registered office of the company and requests a copy; and

(c) a copy of each certificate furnished by a director of the company in accordance with subsection (5).

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(11) The company may attach to a notice posted in accordance with subsection (9) a copy of the report prepared in accordance with subsection (4) and, where it so attaches a copy of that report, the company is not required to attach the summary and notice referred to in paragraphs (10)(a) and (b).

(12) A meeting of creditors convened under this section shall be convened for a day, time and place convenient to the majority in value of the creditors.

(13) The creditors of the company present at the meeting who are entitled to vote on a special resolution moved at the meeting shall appoint a chairman of the meeting.

(14) The chairman so appointed shall at the meeting determine whether the day, time and place of the meeting are convenient to the majority in value of the creditors, and his or her decision is final.

(15) Within 7 days after the first notice convening the meeting is posted to any creditor, the company shall lodge with the Commission a copy of that notice and shall attach to the copy a certified copy of the report required to be prepared by the company under subsection (4) and a certified copy of each of the certificates furnished by the directors under subsection (5).

(16) If a company fails to comply with subsection (1), (4), (10) or (15), or a request referred to in paragraph (10)(b), the company is, notwithstanding section 1311, not guilty of an offence against this Law but any officer of the company who is in default is guilty of an offence.

(17) Any director of a company who fails to take all reasonable steps to secure compliance by the company with subsection (4) is guilty of an offence.

(18) A director who contravenes, or fails to comply with, subsection (5), (6) or (7) is guilty of an offence.

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The Corporations Law—Section 437

437 Report as to affairs of company to be submitted to meeting of creditors

(1) The directors of a company that has convened a meeting of creditors under section 436 shall appoint one of their number to attend the meeting.

(2) The director so appointed shall attend the meeting and shall:
- (a) submit to the meeting the report prepared in accordance with subsection 436(4); and
- (b) disclose to the meeting the company's affairs and the circumstances leading up to the convening of the meeting.

(3) If subsection (1) or (2) is contravened, a person (other than the company) who is involved in the contravention contravenes this subsection.

438 Power to adjourn meeting

(1) A meeting convened under section 436 may by resolution be adjourned from time to time to a time and day specified in the resolution but shall not be adjourned to a day later than 21 days after the day for which the meeting was originally convened.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a day more than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the day, time and place of the resumption of the meeting to be published, at least 7 days before that day, in a daily newspaper circulating generally in the State or Territory in which the resumed meeting is to be held.

439 Power of creditors to place company under official management

(1) At a meeting of creditors of a company convened under section 436, the creditors may, by special resolution:

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(a) resolve that the company be placed under official management for a period, beginning on the date of the passing of the resolution and ending not more than 3 years from that date, specified in the resolution;

(b) appoint a person named in the resolution who:

(i) has consented in writing to act as official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a body corporate that is a mortgagee of property of the company; and

(iv) has furnished to the company a certificate under his or her hand stating that he or she is not an insolvent under administration;

to be the official manager of the company during the period of the official management; and

(c) fix the amount of the salary or other remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) The company shall:

(a) within 7 days after the passing of the special resolution referred to in subsection (1):

(i) cause a notice in the prescribed form of the passing of the resolution to be lodged with the Commission; and

(ii) send by post to each of the creditors and members of the company a notice in the prescribed form of the passing of the special resolution and the provisions of section 454; and

(b) within 21 days after the passing of the special resolution, cause notice that the company has been placed under official management and of the full name of the official manager to be published in the *Gazette*.

(3) If the company fails to comply with subsection (2), the company is, notwithstanding section 1311, not guilty of an offence but any officer of the company who is in default is guilty of an offence.

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(4) A creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, more than 5% of the total unsecured debts of the company may, within 14 days after the appointment of a person as official manager of the company under subsection (1) of this section or subsection 456(3), apply to the Court for an order terminating the appointment.

(5) Where, on an application under subsection (4), the Court is of the view that the person is not suitable to be the official manager of the company, the Court may make an order:
   (a) terminating the person's appointment; and
   (b) appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

(6) Where under subsection (5) the Court has made an order appointing a person to be the official manager of a company, this Part applies to that person as if the person had been appointed official manager of the company at a meeting of creditors under subsection (1) on the date of the order.

(7) Where the Court makes an order under subsection (5), the person obtaining the order shall:
   (a) within 7 days after the making of the order, lodge with the Commission notice in the prescribed form of the making of the order and its date; and
   (b) within 7 days after the passing and entering of the order, lodge with the Commission an office copy of the order.

440 Appointment of committee of management

(1) At a meeting of the creditors of a company held under this Part, the creditors may resolve that a committee of management be appointed for the purposes of this Part.

(2) A committee of management of a company shall consist of 5 natural persons, of whom 3 shall be appointed by the creditors of

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the company by special resolution and 2 shall be appointed by the members of the company at a general meeting of the company.

(3) A person is not eligible to be appointed a member of a committee of management of a company unless the person is:

(a) in the case of an appointment by the creditors of the company:

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or

(iii) a person authorised in writing by a creditor of the company to be a member of the committee of management; or

(b) in the case of an appointment by the members of the company:

(i) a member of the company;

(ii) the attorney of a member of the company by virtue of a general power of attorney given by the member; or

(iii) a person authorised in writing by a member of the company to be a member of the committee of management.

441 Notice of appointment and address of official manager

(1) A person who has been appointed official manager of a company shall:

(a) within 7 days after the date of his or her appointment, lodge notice in the prescribed form of his or her appointment as official manager and of the address of his or her office; and

(b) within 14 days after any change in the situation of his or her office, lodge notice in the prescribed form of the change.

(2) A person shall:

(a) within 7 days after his or her resignation or removal from office as official manager of a company, lodge notice in the prescribed form of his or her resignation or removal; and

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(b) within 21 days after his or her resignation or removal from office as official manager of a company, cause notice of his or her resignation or removal to be published in the *Gazette*.

442 Effect of resolution

(1) Subject to section 454, where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection 439(1):

(a) the company is under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this Part;

(b) the directors of the company cease to hold office;

(c) the person appointed official manager of the company shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company; and

(d) the affairs of the company shall be conducted subject to this Part.

(2) The official manager shall be chairman of any meeting of the company, of its creditors or of the creditors and members of the company that is held or resumed while he or she holds office as official manager.

443 Six-monthly meetings of creditors and members

(1) Subject to subsection (2), within 2 months after the end of the period of 6 months beginning on the date of his or her appointment as official manager and of each subsequent period of 6 months, or, if the Commission, at any time before the end of any such period, requires or permits him or her to do so in respect of a lesser period specified by the Commission, within 2 months after the end of the period so specified, the official manager of a company shall:

(a) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he or she thinks

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necessary to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period;

(b) convene a meeting of the creditors and members of the company to consider the statement and report; and

(c) cause the statement and report to be laid before the creditors and members at that meeting.

(2) Where under subsection (1) the Commission has required or permitted the preparation of a statement and report in respect of a period of less than 6 months, the next period of 6 months shall commence at the end of that lesser period.

(3) The official manager of a company shall attach to each statement referred to in subsection (1):

(a) a statement signed by him or her; and

(b) in the case of a company that is required by this Law to appoint a person to be its auditor—a statement signed by the auditor;

stating in each case whether or not, in the opinion of the person by whom the statement is signed, the statement referred to in subsection (1) is drawn up so as to give a true and fair view of the affairs of the company.

(4) An auditor of a company shall supply to the official manager of the company at his or her request a statement he or she requires for the purposes of complying with subsection (3).

(5) The official manager of the company shall cause copies of the statement and report referred to in this section to be kept and to be available for inspection by any creditor or member of the company at the registered office of the company.

(6) The official manager shall:

(a) give written notice to every creditor and member of the company that the statement referred to in subsection (1) has been made up when next sending to the creditors or members

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any report, notice of meeting, notice of call or dividend relating to the company; and

(b) in the notice inform creditors and members of the company at what address, and between what hours, the statement may be inspected.

(7) Within 7 days after a meeting is held under subsection (1), the official manager shall lodge a notice in the prescribed form of the holding of the meeting and of the day on which it was held, together with a copy of each statement and report laid before the creditors and members at that meeting.

(8) Where a quorum is not present at a meeting convened in accordance with subsection (1), the official manager shall, within 7 days after the day for which the meeting was convened or, if the meeting was adjourned and no quorum is present at the adjourned meeting, within 7 days after the day to which the meeting was adjourned, lodge with the Commission:

(a) a notice stating:

(i) that the meeting was duly convened and that no quorum was present; or

(ii) that the meeting was duly convened and adjourned and that no quorum was present at the adjourned meeting;

as the case requires; and

(b) a copy of the statement and a copy of the report prepared in accordance with paragraph (1)(a).

(9) Where the statement referred to in subsection (1) is not accompanied by a statement signed by a registered company auditor, the Commission may cause the statement referred to in subsection (1) to be audited by a registered company auditor appointed by the Commission, and, for the purposes of the audit, the official manager shall furnish to the auditor such books and information as the auditor requires.

(10) The costs of an audit under subsection (9) shall be fixed by the Commission and are part of the costs of the official management.

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444 Stay of proceedings

(1) Where a company is under official management, no action or other civil proceeding against the company in a court of this jurisdiction shall, except with the leave of the Court and in accordance with such terms and conditions (if any) as the Court imposes, be begun or carried on until the company ceases to be under official management.

(2) At any time after a company has, in accordance with section 436, convened a meeting of its creditors for the purpose of placing the company under official management and before the passing of a special resolution by the creditors under subsection 439(1) resolving that the company be placed under official management, the company or any creditor of the company may, if any action or other civil proceeding against the company in a court of this jurisdiction is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

445 Power to extend period of official management

(1) The official manager of a company shall convene a meeting of creditors of the company for a day not earlier than 7 months, and not later than 1 month, before the day on which the period of official management is due to end for the purpose of considering whether or not the period of official management should be extended and, if the creditors think fit, passing a special resolution extending the period of official management for such further period not exceeding 12 months as is specified in the resolution.

(2) If, at a meeting held under section 443 not earlier than 7 months and not later than one month before the day on which the period of official management is due to end, the creditors of the company consider whether or not the period of official management should be extended, the official manager shall be taken to have complied with subsection (1).

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(3) The meeting referred to in subsection (1) shall be convened by the official manager by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a notice specifying the day, time, place and purpose of the meeting.

(4) The official manager shall, within 7 days after the passing of a special resolution under subsection (1), lodge a copy of that resolution.

446 Extension of period of official management

Where a special resolution extending the period of official management of a company is passed at a meeting convened in accordance with section 445, the company continues under official management during the period specified in the resolution unless the official management is further extended or is earlier terminated under this Part.

447 Appointment of official manager not to affect appointment and duties of auditor

While a company is under official management, the provisions of this Law relating to the appointment and re-appointment of auditors and the rights and duties of auditors continue to apply in relation to the company and, in the application of those provisions in relation to the company, a reference to the directors of a company shall be read as a reference to the official manager of the company.

448 Duties of official manager

(1) Subject to this Law, the official manager of a company shall:

(a) as soon after his or her appointment as is reasonably practicable, take into his or her custody or under his or her control all the property to which the company is or appears to be entitled;

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(b) subject to any direction given pursuant to paragraph (c), conduct the business and management of the company in such manner as he or she thinks most economical and most beneficial to the interests of the members and creditors of the company;

(c) comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which special notice has been given;

(d) comply with all requirements of this Law applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on the company or on the directors of the company by or under this Law;

(e) if so directed by the committee of management of the company acting under subsection 458(6) or by a creditor or creditors of the company to whom the company owes at least 10% in value of the total unsecured debts of the company, by notice sent by post to each of the creditors, convene a meeting of creditors of the company; and

(f) if a meeting of creditors held under subsection 445(1) does not resolve to extend the period of the official management—within 7 days after the conclusion of the meeting, by notice sent by post to each of the members of the company, convene a meeting of the members to be held on a day not later than 21 days after the conclusion of the meeting of creditors under subsection 445(1) for the purpose of:

(i) reporting to the members accordingly; and

(ii) enabling the members, if they think fit, to elect directors of the company to take office upon the termination of the period of official management.

(2) A meeting convened under paragraph (1)(f) shall be deemed to have been properly convened and to be empowered under the memorandum and articles of the company to appoint or elect directors, and directors so appointed or elected shall take office on

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the termination of the period of official management of the company.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts, he or she shall convene a meeting of the members of the company for the purpose of considering and, if the members think fit, passing a special resolution that the company be wound up voluntarily.

(4) Where the official manager convenes a meeting of members of the company under subsection (3), the official manager shall:

(a) convene a meeting of the creditors of the company for the day, or the day next following the day, on which the meeting of members is proposed to be held;

(b) cause the notices of the meeting of creditors to be sent by post to the creditors on the same day as the sending of the notices of the meeting of the members; and

(c) convene the meeting of creditors for a day, time and place convenient to the majority in value of the creditors and give the creditors at least 14 days' notice by post of the meeting.

(5) The official manager shall lay before the meeting of creditors convened in accordance with subsection (4) a report in the prescribed form as to the affairs of the company made up to a day that is not more than 30 days before the day for which the meeting is convened.

(6) Where, at a meeting of members of a company convened under subsection (3), the members pass a special resolution to the effect that the company be wound up voluntarily:

(a) the members shall, at that meeting, nominate a person to be liquidator for the purpose of winding up the affairs, and distributing the property, of the company; and

(b) the creditors may, at the meeting of creditors of the company convened under subsection (4), nominate a person to be liquidator for that purpose.

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(7) A person nominated by the members of a company pursuant to subsection (6) shall, subject to subsections (8) and (9), be the liquidator of the company.

(8) Where the members and creditors of a company nominate different persons to be the liquidator of the company, the person nominated by the creditors shall, subject to subsection (9), be the liquidator of the company.

(9) Where the members and creditors of a company nominate different persons to be the liquidator of the company, the Court may, on the application of a member or creditor of the company made within 7 days after the day on which the nomination was made by the creditors, by order, direct that the person nominated by the members be the liquidator of the company or that the persons nominated by the members and creditors, respectively, be jointly the liquidators of the company.

(10) On the appointment of a liquidator the company ceases to be under official management.

(11) The person who, immediately before the appointment of the liquidator, was the official manager of the company shall, within 7 days after the holding of the later of the meetings referred to in subsections (3) and (4), lodge a notice in the prescribed form of the holding of the meetings and the dates of the meetings, being a notice that has attached to it a copy of the report referred to in subsection (5).

449 Undue preferences in the case of official management

(1) A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a company which, if it had been made or incurred by a natural person, would, in the event of his or her becoming a bankrupt, be void as against the trustee in the bankruptcy, is, if the company is placed under official management, void as against the official manager.

(2) Where:

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(a) a creditor of a company has issued execution against the property of the company or has instituted proceedings to attach a debt due to the company or to enforce a charge, or a charging order, against property of the company; and

(b) the creditor would, if the execution or proceedings had been issued or instituted in relation to a debt due by a natural person who subsequently became a bankrupt, be required to pay the amount (if any) received by the creditor as a result of the execution or proceedings to the trustee in the bankruptcy;

the creditor shall, in the event of the company being placed under official management, pay the amount (if any) received as a result of the execution or proceedings, less the taxed costs of the execution or proceedings, to the official manager.

(3) Where a creditor has paid to the official manager of a company an amount in accordance with subsection (2), that creditor shall be taken to be an unsecured creditor of the company for the amount owed to him, her or it by the company as if the execution or proceedings had not been issued or instituted.

(4) For the purposes of this section, the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person and the date on which a person becomes a bankrupt is the date on which the company commences to be under official management.

450 Application and disposal of property during official management

(1) The official manager of a company may sell or otherwise dispose of any property of the company in the ordinary course of the business of the company.

(2) The official manager of a company may sell or otherwise dispose of any property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the

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ordinary course of the business of the company during the period of official management does not exceed $5,000.

(3) The official manager of a company may, with the consent of the committee of management, sell or otherwise dispose of any property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed $20,000.

(4) The official manager of a company may:

(a) with the leave of the Court; or

(b) with the consent of the creditors given by a special resolution passed at a meeting of the creditors of which special notice has been given, being a notice that set out the intention to propose, as a special resolution, a resolution for the sale or disposal, or the mortgage or charge, of that property;

sell or otherwise dispose of, or mortgage or charge, any property of the company.

(5) The money of the company that becomes available to the official manager of the company during the period of the official management shall be applied by him or her in the following order:

(a) first, in the payment of the costs of the official management, including the remuneration of the official manager, the deputy official manager (if any) and the auditor of the company (if any) appointed in accordance with the provisions of Part 3.7;

(b) next, in discharge of the liabilities of the company incurred in the course of the official management;

(c) next, in discharge of any other liabilities of the company.

(6) Subject to subsection (5), the liabilities of the company referred to in paragraph (5)(c) shall be discharged as if those liabilities were liabilities of a company being wound up, and the provisions of

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Parts 5.4, 5.5 and 5.6 apply, as far as possible, in relation to the discharge of those liabilities.

451 Official manager may apply to Court for directions

(1) The official manager may apply to the Court for directions in relation to any matter arising out of the exercise of his or her powers or functions as official manager.

(2) An act done in accordance with a direction given by the Court on application made under subsection (1) shall be deemed to have been properly done for the purposes of this Law.

452 Certain provisions applicable to official management

(1) This section applies where a company is under official management.

(2) A sum due to a member in that capacity, whether by way of dividends, profits or otherwise, shall not be treated as a debt of the company payable to that member in the case of competition between the member and a creditor who is not a member, but may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

(3) The Court may make such order for inspection of the books of the company by creditors and members as the Court thinks just, and any books in the possession, or in the custody or under the control, of the company may be inspected by creditors or members accordingly, but not further or otherwise.

(4) Sections 533, 534, 535 and 536 apply in relation to the company as if:

(a) the company were being wound up;
(b) a reference in any of those provisions to the liquidator of the company were a reference to the official manager of the company;
(c) a reference in any of those provisions to contributories were a reference to members of the company; and

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(d) the reference in subsection 534(1) to a report lodged under section 533 were a reference to a report lodged under that section as applied by virtue of this subsection.

453 Power of Court to terminate official management and give directions

(1) If at any time, on the application of the official manager or of any creditor or member of a company or of the Commission, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled or that, for any reason, it is undesirable that the company should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and, upon that date, the official manager ceases to be the official manager of the company.

(2) The Court shall not make an order under subsection (1) on an application by a person other than the Commission unless at least 7 days notice in writing of the application has been given to the Commission.

(3) The Court may, on an application under subsection (1), if the applicant or, where the Commission is not the applicant, the Commission so requests, grant leave to the person making the request to file an application for the winding up of the company.

(4) On making an order under subsection (1), the Court may also give such directions as it considers fit for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors to take office upon the termination of the official management.

(5) The costs and expenses of any proceeding before the Court under this section and the costs and expenses incurred in convening a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, form part of the costs of the official management of the company.

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454 Resolution to place company under official management effective, subject to appeal

(1) Where a resolution has been passed under subsection 439(1) determining that a company be placed under official management:

(a) a creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, an amount that exceeds 5% of the total unsecured debts of the company;

(b) a member holding, or any representative of a group of members holding collectively, at least 10% of the paid-up capital of the company; or

(c) in the case of a company not having a share capital, any member holding, or any representative of a group of members holding collectively, at least 10% of the total voting rights of members having a right to vote at all general meetings;

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution and the Court may, if it is of the opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

(2) Where the Court makes an order cancelling a resolution, the Court may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately before it was placed under official management.

(3) Upon the cancellation of a resolution by the Court under this section, the company ceases to be under official management and the person appointed official manager of the company ceases to hold office.

(4) Where the Court makes an order under this section varying a resolution, the resolution has effect, on and from the date of the order, as varied by the order.

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(5) Where an order is made under this section, the acts of the official manager before the making of the order are as valid and binding on the company, and on the members and creditors of the company, as they would have been if the order had not been made.

455 Lodgment of office copy of Court order

(1) Where the Court makes an order under section 453(otherwise than on the application of the Commission) or an order under section 454, the person on whose application the order is made shall lodge:

(a) within 7 days after the order is made—notice in the prescribed form of the making of the order and the date of the order; and

(b) within 7 days of the passing and entering of the order—an office copy of the order.

(2) Where the Commission is an applicant for an order under section 453, the Commission shall enter in its records particulars of the application and, after the passing and entering of the order, an office copy of the order, and subsection 1274(2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the Commission.

456 Termination of appointment and release of official manager

(1) The appointment of a person as official manager of a company terminates where:

(a) that person tenders his or her resignation in writing to either:

(i) the committee of management appointed pursuant to this Part; or

(ii) a meeting of creditors of the company;

(b) a special resolution that the appointment of the person be terminated is passed at a meeting of creditors of the company of which special notice stating that the meeting is convened for the purpose of considering such a resolution has been given; or

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(c) the Court makes an order that the appointment of the person be terminated.

(2) The appointment of a person as official manager of a company shall be terminated by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the company if:

(a) the official manager becomes an insolvent under administration;

(b) the official manager becomes incapable, by reason of mental infirmity, of managing his or her affairs;

(c) having been appointed by an order of the Court under subsection 439(5), the official manager ceases to be a registered company auditor; or

(d) the official manager becomes the auditor of the company.

(3) Where a vacancy occurs in the office of official manager of a company, the committee of management may appoint, or if there is no committee of management, a meeting of creditors of the company convened for that purpose by any 2 of their number may by special resolution appoint, as official manager, a person who is qualified for appointment.

(4) A person is qualified for appointment under subsection (3) if the person:

(a) has consented in writing to act as official manager of the company;

(b) is not the auditor of the company;

(c) is not an officer of a body corporate that is a mortgagee of property of the company; and

(d) has furnished to the committee of management or the chairman of the meeting of creditors, as the case may be, a certificate signed by the person stating that he or she is not an insolvent under administration.

(5) A person appointed official manager under subsection (3) shall assume, and is responsible for, the management of the company

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and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company.

(6) Where the appointment of an official manager terminates or is terminated, until a person is appointed official manager under subsection (3), the powers and functions of the official manager vest in, and the duties of the official manager shall be performed by:

(a) the deputy official manager;

(b) if there is no deputy official manager—the committee of management; or

(c) if there is no deputy official manager and no committee of management—a person appointed by the Court, on the application of a creditor of the company, to act as official manager until a person is appointed official manager under subsection (3).

(7) A person who convenes a meeting of creditors of a company for the purpose of considering a resolution that the appointment of a person as official manager of the company be terminated shall give to the person who is the official manager not less than 14 days written notice of the meeting and of the purpose for which it is being convened.

(8) Where a person who is an official manager of a company receives a notice given under subsection (7), he or she shall:

(a) before the date on which the meeting is to be held, prepare a report showing how the official management of the company has been conducted by him or her;

(b) present the report to the meeting and give such explanations of that report as are reasonably requested by any creditor; and

(c) within 7 days after the holding of the meeting, lodge with the Commission a notice of the holding of the meeting:

(i) setting out the date on which the meeting was held; and

(ii) stating whether the resolution for the termination of the appointment of the person as official manager was passed;

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together with a copy of the report prepared in accordance with paragraph (a).

(9) Where a person (other than a person who has been given notice of a meeting under subsection (7)) ceases to be an official manager of a company (including a person who ceases to be an official manager by reason that his or her appointment is terminated by the Court under subsection 439(5)):

(a) the person shall, notwithstanding that he or she has ceased to be the official manager, within 14 days after the day on which he or she ceased to be the official manager, prepare a report showing how the official management was conducted by him or her and, for this purpose, he or she has a right of access to the books of the company; and

(b) the person shall, within 28 days after the day on which he or she ceased to be the official manager, convene a meeting of all persons who were creditors of the company at the commencement of the official management and all persons who, on the day on which the person ceased to be the official manager, were creditors of the company.

(10) Notice of the meeting referred to in paragraph (9)(b) shall be given to the creditors of the company by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the date fixed for the holding of the meeting, a notice specifying the day, time, place and purpose of the meeting and a copy of the report prepared in accordance with paragraph (9)(a).

(11) At the meeting of creditors convened under paragraph (9)(b), the person who was the official manager of the company shall present his or her report to the meeting and shall give such explanations of that report as are reasonably requested by any creditor.

(12) Within 7 days after the holding of the meeting referred to in paragraph (9)(b), the person who was the official manager shall lodge notice of the holding of the meeting and of the date on which it was held, together with a copy of the report prepared in accordance with paragraph (9)(a).

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(13) At a meeting of creditors convened under paragraph (9)(b), 2 creditors constitute a quorum and, if a quorum is not present at the meeting, the person who was the official manager shall, within 7 days after the day for which the meeting was convened, lodge:

(a) a notice stating that the meeting was duly convened and that no quorum was present; and

(b) a copy of the report prepared in accordance with paragraph (9)(a).

(14) If the meeting is not held on the day for which it is convened under paragraph (9)(b), the person who was official manager shall, within 7 days after that day, lodge:

(a) a notice stating that the meeting was not held on that day; and

(b) a copy of the report prepared in accordance with paragraph (9)(a).

(15) The expenses incurred by a person who was an official manager of a company in connection with the preparation of a report in accordance with paragraph (8)(a) form part of the costs of the official management.

(16) The expenses incurred by a person who was official manager of a company in connection with the preparation of a report in accordance with paragraph (9)(a) and in relation to the convening and holding of the meeting in accordance with paragraph (9)(b) form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

(17) Subject to subsection (18), where a person ceases to be the official manager of a company (including a person who ceases to be an official manager by reason that his or her appointment is terminated by the Court under subsection 439(5)), the adoption by a meeting of creditors of the company of the report prepared by him or her under paragraph (8)(a) or (9)(a), as the case requires, and of his or her explanations, discharges him or her from all liability in respect of any act or omission by him or her in the management of the company or otherwise in relation to his or her conduct as official manager.

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(18) The adoption by a meeting of creditors of a company of a report prepared in accordance with paragraph (8)(a) or (9)(a) by a person who has ceased to be the official manager of the company and of any explanations of the person in relation to the report does not:

(a) discharge the person from the liabilities referred to in subsection (17) if the adoption was obtained by fraud or by suppression or concealment of a material fact; or

(b) discharge the person from a liability to which, by virtue of a law other than this Law, he or she would be subject in respect of any negligence, default, breach of trust or breach of duty committed by him or her in relation to the company.

(19) If the report prepared by a person in accordance with paragraph (8)(a) or (9)(a) and the explanations of the report are not adopted by a meeting of creditors within 2 months after:

(a) in the case of a report prepared in accordance with paragraph (8)(a)—the date of the meeting to which the report was presented; or

(b) in the case of a report prepared in accordance with paragraph (9)(a)—the date on which notice of the meeting convened in accordance with paragraph (9)(b) was given to the creditors of the company;

the person may apply to the Court for an order of release.

(20) If a person who was official manager of the company complies with subsection (13), he or she may apply to the Court for an order of release.

(21) On an application under subsection (19) or (20), the Court may, if it thinks fit, make an order releasing the applicant from liability for acts or omissions by him or her in the management of the company and such an order has the same effect as the adoption of a report and explanations has under subsection (17).

(22) Where the Court makes an order under subsection (21), it may by order direct that any costs or expenses incurred by the applicant in connection with the application shall form part of the costs of the

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official management and shall be deemed to have been incurred during the period of the official management.

(23) Where the Court makes an order under subsection (21), the person who was the official manager shall lodge with the Commission an office copy of the order within 7 days after the passing and entering of the order.

457 Notification that company is under official management

A company that is under official management shall set out, in every public document, and in every eligible negotiable instrument, of the company, after the name of the company where it first appears, the expression “under official management”.

458 Functions of committee of management; appointment of deputy official manager

(1) The functions of the committee of management of a company appointed under this Part are to assist and advise the official manager of the company in relation to any matters concerning the management of the company on which he or she requests the advice and assistance of the committee.

(2) Either the committee of management of a company or a meeting of creditors of a company convened by the official manager:

- (a) may appoint a person who:
  - (i) has consented in writing to act as deputy official manager of the company;
  - (ii) is not the auditor of the company;
  - (iii) is not an officer of a body corporate that is a mortgagee of property of the company; and
  - (iv) has furnished to the official manager a certificate under his or her hand stating that he or she is not an insolvent under administration;

  to be a deputy official manager of the company;
- (b) may remove the deputy official manager from office and may, if the committee of management or the meeting of

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creditors, as the case may be, considers it is necessary, appoint another person to be deputy official manager in his or her place; and

(c) may determine the amount of the salary or other remuneration of the deputy official manager.

(3) In the absence of the official manager of a company, a deputy official manager shall, subject to any written directions given to him or her by the official manager, act as the official manager and, while so acting, has the powers, duties and functions of the official manager.

(4) A person who is appointed deputy official manager of a company shall, within 14 days after his or her appointment, lodge with the Commission a notice in the prescribed form of his or her appointment as deputy official manager and of the address of his or her office and, in the event of any change in the situation of his or her office, he or she shall, within 14 days after the change, lodge with the Commission notice in the prescribed form of the change.

(5) A person who ceases to be deputy official manager shall, within 14 days after ceasing to be deputy official manager, lodge with the Commission notice in the prescribed form of his or her ceasing to be deputy official manager.

(6) The committee of management of a company may, at any time and from time to time, direct the official manager of the company to convene a meeting of the creditors of the company or a meeting of the members of the company or a meeting of both creditors and members of the company, and the official manager shall give effect to the direction.

(7) Subject to this section and the regulations, the provisions of sections 549 and 550 apply with respect to a committee of management of a company, the proceedings of and vacancies in a committee of management of a company, and the removal of members of the committee of management of a company, and so apply as if:

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(a) a reference in any of those provisions to the committee of inspection or to the committee were a reference to the committee of management;
(b) a reference in any of those provisions to a member of the committee were a reference to a member of the committee of management;
(c) a reference in any of those provisions to the liquidator were a reference to the official manager of the company; and
(d) a reference in any of those provisions to a contributory were a reference to a member of the company.

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