



Tuvalu

# **INTERNATIONAL COMPANIES ACT 2009**





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Tuvalu

# INTERNATIONAL COMPANIES ACT 2009

Act No. 10 of 2009

## AN ACT TO MAKE PROVISIONS FOR THE INCORPORATION AND OPERATION OF INTERNATIONAL COMPANIES AND RELATED MATTERS.

ENACTED BY THE PARLIAMENT OF TUVALU  
30th November, 2009

Commencement [1st January, 2011]

### PART I SHORT TITLE AND INTERPRETATION

#### 1 Short Title

This Act may be cited as the International Companies Act.

#### 2 Interpretation

(1) In this Act

“**annual return**” means the annual return to be submitted by a company incorporated under this Act in accordance with section 46;

“**Articles**” means the Articles of Association of a company incorporated under this Act;

“**authorized capital**” of a company means the sum of the aggregate par value of all shares with par value which the company is authorized by its Memorandum to issue;

“**business of shipping**” or “**shipping business**” means the business of ownership, sale, purchase, management, operation, charter, lease, repair, construction, supply and agency of and relating to ocean going vessels;

“**capital**” of a company means the sum of the aggregate par value of all outstanding shares with par value of the company plus the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

“**Companies Act**” means the Companies Act 1991 of Tuvalu;

“**court**” means the High Court of Tuvalu or a Judge thereof;

“**member**” means a person who holds shares in a company;

“**Memorandum**” means the Memorandum of Association of a company incorporated under this Act;

“**person**” includes a trust, the estate of a deceased individual, a partnership, an unincorporated association of persons, or an incorporated entity;

“**person resident in Tuvalu**” means a person who ordinarily resides within Tuvalu or carries on business from an office or other fixed place of business within Tuvalu but does not include a company incorporated under this Act;

“**Register**” means the Register of International Companies maintained by the Registrar in accordance with this Act;

“**register of directors**” means the register of directors of a company incorporated under this Act to be maintained by the company in accordance with section 38;

“**registered agent**” means the person who is at any particular time performing the functions of registered agent of a company incorporated under this Act;

“**Registrar**” means the Registrar of International Companies appointed under this Act and includes any other officer so appointed who acts, under the delegated authority of the Registrar;

“**share register**” means the share register of a company incorporated under this Act to be maintained by the company in accordance with section 27;

“**securities**” means shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

“**surplus**” in relation to a company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities, as shown in the books of account, plus its capital;

- (2) A reference to money in this Act is a reference to the currency of the United States of America.
- (3) A reference in this Act to voting in relation to shares shall be construed as a reference to voting by members holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of members



who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.

- (4) A reference in this Act to a person shall include a corporate entity which may be incorporated or having a place of business outside of Tuvalu.
- (5) Words used in this Act denoting the male gender shall include the female gender.
- (6) Unless otherwise defined in the Articles of a company incorporated under this Act, the expression “**resolution of directors**” means
  - (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of a company, by affirmative vote of a simple majority or such larger majority as may be specified in the Articles, of the directors present at the meeting who voted and did not abstain; or
  - (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the Articles, of all the directors or of all the members of the committee, as the case may be;

but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts.

- (7) Unless otherwise defined in the Articles of a company incorporated under this Act, the expression “**resolution of members**” means
  - (a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shares that were present at the meeting and entitled to vote thereon and were voted and did not abstain;
  - (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the Articles, of the votes of shares entitled to vote thereon.

## PART II CONSTITUTION OF COMPANIES

### 3 Subscription of registered agent to Memorandum

Subject to the requirements of this Act, the registered agent named in the Memorandum may, by subscribing to a Memorandum and to Articles, incorporate a company under this Act.

#### 4 Restrictions on Incorporation

No company shall be incorporated under this Act unless immediately upon its incorporation the company is an International Company.

#### 5 Requirements of International Company

- (1) For purposes of this Act, an International Company is a company that does not
  - (a) carry on business with persons resident in Tuvalu;
  - (b) own an interest in real property situate in Tuvalu, other than a lease referred to in paragraph (e) of subsection (2);
  - (c) carry on banking or trust business, unless it is separately and specifically licensed to do so;
  - (d) carry on business as an insurance or reinsurance company, insurance agent or insurance broker, unless it is licensed under an enactment authorizing it to carry on that business; or
  - (e) carry on the business of providing the registered office or the registered agent for companies incorporated in Tuvalu.
- (2) For purposes of paragraph (a) of subsection (1), an International Company shall not be treated as carrying on business with persons resident Tuvalu by reason only that
  - (a) it makes or maintains deposits with a person carrying on banking business within Tuvalu;
  - (b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business within Tuvalu;
  - (c) it prepares or maintains books and records within Tuvalu;
  - (d) it holds, within Tuvalu, meetings of its directors or members;
  - (e) it holds a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained;
  - (f) it holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or
  - (g) shares, debt obligations or other securities in the company are owned by any person resident in Tuvalu or by any company incorporated under this Act or under the Companies Act.
- (3) For the purpose of this Act, an International Company is a company that solely carries on the business of shipping.

## **6 Effect of non-compliance with requirements of International Company**

- (1) Without affecting the operation of any other provision of this Act, if a company is incorporated under this Act without having satisfied the requirements prescribed under this Act for an International Company, or if having satisfied the requirements it subsequently ceases to satisfy the requirements for a continuous period of more than 30 days, the company shall upon expiration of that period notify the Registrar of that fact.
- (2) A company that wilfully contravenes subsection (1) is liable to a penalty of \$100 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

## **7 No Personal Liability**

Without affecting the operation of any other provision of this Act, no member, director, officer, agent or liquidator of a company incorporated under this Act is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in Tuvalu, and except in so far as he may be liable for his own conduct or acts.

## **8 Company Objects and Purposes**

A company may be incorporated under this Act for any object or purpose that is consistent with the company being an international company that solely carries on the business of shipping.

## **9 Powers**

Subject to any limitations or provisions to the contrary in its Memorandum or Articles, this Act or any other law for the time being in force in Tuvalu, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following:

- (a) issue registered voting shares;
- (b) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose;
- (c) protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company; and
- (d) issue shares in the currency of the United States of America.

## 10 Validity of acts of company

No act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid by reason only of the fact that the company was without capacity or power to perform the act, or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases:

- (a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of real or personal property by or to the company; or
- (b) in proceedings by the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorized act.

## 11 Name

- (1) The word “Limited” or the abbreviation “Ltd” must be part of the name of every company incorporated under this Act, but a company may use and may be legally designated by either the full or the abbreviated form.
- (2) No company shall be incorporated under this Act under a name that
  - (a) is identical with that under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its consent; or
  - (b) contains the words “Assurance”, “Bank”, “Building Society”, “Chamber of Commerce”, “Chartered”, “Cooperative”, “Insurance”, “Municipal”, “Royal”, “Trust Company”, “Trustee Company” or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, is inappropriate, misleading, indecent, offensive or, in the opinion of the Registrar, objectionable.
- (3) Subject to the approval of the Registrar, a company may amend its Memorandum to change its name.
- (4) If a company is incorporated under a name that
  - (a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act, or
  - (b) so nearly resembles the name as to be calculated to deceive;

the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice, the Registrar may amend the Memorandum of the company to change its name to such name as the Registrar deems appropriate, and the Registrar shall record the change in the

Register and give notice in writing of the change to the registered agent of the last registered company.

- (5) Subject to subsections (2), (3) and (4), where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue a certificate of incorporation indicating the change of name.
- (6) A change of name does not affect any rights or obligations of a company, or render defective any legal proceedings by or against a company, and all legal proceedings that have been commenced by or against a company under its former name may be continued by or against it under its new name.
- (7) Subject to subsection (2) the Registrar may, upon a request made by any person, reserve for 30 days a name for future adoption by a company under this Act.

## 12 Content of Memorandum

- (1) The Memorandum must include
  - (a) the name of the company;
  - (b) the address within Tuvalu of the registered office of the company;
  - (c) the name and address within Tuvalu of the registered agent of the company;
  - (d) the objects or purposes for which the company is to be incorporated and shall include the carrying on of the business of shipping;
  - (e) a statement that the shares in the company shall be denominated in the currency of the United States of America;
  - (f) a statement of the authorized capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorized to issue;
  - (g) a statement that the company may not carry on the activities set forth in subsection (I) of section 5 which statement shall set forth verbatim the activities described in that subsection;
  - (h) the identity of the persons that is proposed to be appointed the first directors of the company;
  - (i) the identity of the persons who would be the first members of the company and the number of shares that each of the first members will subscribe to.
- (2) For purposes of paragraph (d) of subsection (1), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under this Act, the effect of that statement is to make all acts and

activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.

- (3) The Memorandum must be subscribed by the registered agent named in the Memorandum.
- (4) The Memorandum, when registered, binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Memorandum, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Memorandum. subject to this Act.

### 13 Articles

- (1) The Memorandum, when submitted for registration, must be accompanied by Articles prescribing regulations for the company.
- (2) The Articles must be subscribed by the registered agent named in the Memorandum.
- (3) The Articles, when registered, bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.

### 14 Registration of Memorandum and Articles

- (1) The Registrar shall not register the Memorandum or the Articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with, and  
the registered agent named in the Memorandum of the company to be registered agent,  
certifies in writing that the requirements of this Act in respect of registration have been complied with and the written certification delivered to the Registrar is sufficient evidence of compliance.
- (2) Subject to subsection (1), the Registrar shall retain and register the Memorandum and Articles submitted to him in a Register to be maintained by him to be known as the Register of International Companies.
- (3) Any person applying to the Registrar to register the Memorandum and Articles for the incorporation of a company under this Act shall provide to the Registrar such financial, character and security information of persons who has a pecuniary interest in the company in such form as may be prescribed by the Minister..

- (4) Upon due compliance with subsection (3) and upon the registration of the Memorandum and the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.

## **15 Certificate of Incorporation**

- (1) Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum.
- (2) A certificate of incorporation of a company incorporated under this Act issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of incorporation.

## **16 Amendment of Memorandum and Articles**

- (1) Subject to any limitation in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.
- (2) A company that amends its Memorandum or Articles must submit to the Registrar an extract of the resolution of members or the resolution of directors amending the Memorandum or Articles, as the case may be, certified as a true copy of the resolution amending the Memorandum or Articles by
  - (a) the solicitor engaged in advising the company; or
  - (b) the registered agent named in the Memorandum of the company, and the Registrar must retain and register the certified copy of the extract of the resolution.
- (3) An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar.
- (4) A company that wilfully contravenes subsection (2) is liable to a penalty of \$50 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

## **17 Provision of copies of Memorandum and Articles**

- (1) A copy of the Memorandum and a copy of the Articles must be given by the Company to any member who requests a copy on payment by the member of such amount as the director may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

- (2) A company that wilfully contravenes subsection (1) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

## **PART III CAPITAL AND DIVIDENDS**

### **18 Allotment of Shares**

- (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the unissued shares of a company incorporated under this Act shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the company may, by resolution of directors, determine.
- (2) No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in this Act.
- (3) Subject to any limitations in the Memorandum or Articles, each share in a company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

### **19 Forfeiture of Shares**

- (1) The Memorandum or Articles, or an agreement for the subscription of shares, of a company incorporated under this Act may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.
- (2) Any provision in the Memorandum or Articles, or in an agreement for the subscription of shares of a company incorporated under this Act providing for the forfeiture of shares shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.
- (3) The written notice referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on



or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

- (4) Where a notice has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors forfeit and cancel the shares to which the notice relates.
- (5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

## **20 Amount of Consideration for Shares**

- (1) Subject to any limitations in the Memorandum or Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, except that the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive.
- (2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

## **21 Currency of Authorised Capital**

The authorized capital of a company incorporated under this Act shall be in the currency of the United States of America and the par value of the share shall be expressed in the same currency.

## **22 Capital and Surplus**

Upon the issue by a company incorporated under this Act of a share, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

## **23 Dividend Shares**

- (1) A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

- (2) A division of the issued and outstanding shares into a larger number of shares having a proportionately smaller par value does not constitute a dividend of shares.

## **24 Increase or Reduction of Authorised Capital**

- (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum to increase or reduce its authorized capital, and in connection therewith, the company may
  - (a) increase or reduce the number of shares which the company may issue;
  - (b) increase or reduce the par value of any of its shares; or
  - (c) effect any combination under paragraph (a) and (b).
- (2) Where a company reduces its authorized capital under subsection (1), then, for purposes of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.
- (3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorized capital.

## **25 Division and combination of shares**

- (1) A company incorporated under this Act may amend its Memorandum
  - (a) to divide the shares, including issued shares, into a larger number of shares; or
  - (b) to combine the shares, including issued shares, into a smaller number of shares.
- (2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

## **26 Share Certificates**

- (1) A company incorporated under this Act must issue certificates in respect of its shares, and the certificates
  - (a) must be signed by a director of the company, and
  - (b) must be under the common seal of the company;and the Articles may provide for the signatures or common seal to be facsimiles.

- (2) A certificate issued in accordance with subsection (1) specifying a share held by a member of the company is prima facie evidence of the title of the member to the share specified therein.

## 27 Share Register

- (1) A company incorporated under this Act shall cause to be kept a share register containing:
  - (a) the names and addresses of the persons who hold registered shares in the company;
  - (b) the number of registered shares held by each person;
  - (c) the date on which the name of each person was entered in the share register;
  - (d) the date on which any person ceased to be a member;

but the company may delete from the register information relating to persons who are no longer members. The company shall update any changes in the information contained in the share Register within 14 days of receiving information as to the changes.

- (2) The share register may be in any such form as the directors may approve but if it is in magnetic, electronic or other data storage form. the company must be able to produce legible evidence of its contents.
- (3) A copy of the share register, commencing from the date of the registration of the company, shall be kept by the registered agent at the registered office of the company and a further copy shall be lodged with the Registrar.
- (4) The share register is prima facie evidence of any matters directed or authorized by this Act to be contained therein.
- (5) A company that wilfully contravenes this section is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

## 28 Failure to properly maintain Share Register

- (1) If
  - (a) information that is required to be entered in the share register is omitted therefrom or inaccurately entered therein; or
  - (b) there is unreasonable delay in entering the information in the share register,

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Registrar for the share register to be rectified, and the Registrar may either grant or refuse the application, with or without giving reasons, or order the rectification of the share register.

- (2) The Registrar may, in any application under subsection (1), determine any question relating to the right of a person affected by the application to have his name entered in or omitted from the share register, whether the question arises between
- (a) two or more members or alleged members; or
  - (b) between members or alleged members and the company;
- and generally the Registrar may in relation to the application determine any question that may be necessary or expedient to be determined for the rectification of the share register, and the Registrar shall not be liable for any loss or damage suffered or incurred as a result of its determination of the question.
- (3) Unless the Articles or Memorandum or shareholders' agreement or equivalent provides otherwise, any member or alleged member who is dissatisfied with the Registrar's determination under sub-section (2) may refer the question for review and determination by arbitration in Singapore under the rules of the Singapore International Arbitration Centre, and the tribunal shall comprise a sole arbitrator to be appointed by the Chairman of the Singapore International Arbitration Centre.
- (4) The arbitration under subsection 3 shall be between the member or alleged member and other members, or between members or alleged members and the company, as the case may be in connection with the question to be determined under subsection 2. The Registrar shall not be a party to the arbitration and may not be joined as a party to the arbitration by any party or person.

## 29 Transfer of Shares

- (1) Subject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.
- (2) In the absence of a written instrument of transfer mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.
- (3) A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the share register.
- (4) Subject to any limitation or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.
- (5) A transfer of registered shares of a deceased, incompetent or bankrupt member of a company incorporated under this Act made by his personal

representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

- (6) For the purposes of subsection (5), what amounts to incompetence on the part of a person is a matter to be determined by a court of law having jurisdiction to make the determination concerning the member.

### **30 Payment of Dividends**

- (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.
- (2) Dividends shall only be declared and paid out of surplus.
- (3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend
  - (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
  - (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive.

### **31 Appreciation of Value of Assets**

Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealized appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive.

## **PART IV REGISTERED OFFICE AND REGISTERED AGENT**

### **32 Registered Office**

- (1) A company incorporated under this Act shall at all times have a registered office in Tuvalu, and the registered office must be an office maintained in Tuvalu by the company or its registered agent.

- (2) Records and registers to be kept and maintained by a company incorporated under this Act at its registered office may be kept and maintained solely on behalf of the company at the office of the registered agent of the company, whether within Tuvalu or outside Tuvalu.

### **33 Registered Agent**

- (1) A company incorporated under this Act shall at all times have a registered agent.
- (2) No person shall be a registered agent unless he has been licensed as a registered agent by the Minister under this Act.
- (3) Records and registers to be kept and maintained by a company incorporated under this Act may be kept and maintained on its behalf by the registered agent of the company, whether within Tuvalu or outside Tuvalu.
- (4) If a registered agent refuses to continue as the registered agent of a company, the registered agent shall give the company not less than 30 days notice of its intention to discontinue as the registered agent and serve a copy of the notice concurrently on the Registrar.
- (5) Upon receipt of the notice under sub-section (4), the Registrar shall give notice to the company that if it does not appoint a registered agent prior to the expiry of the notice served by its registered agent under sub-section (4), the name of the company will be struck off the Register.
- (6) If a company fails to appoint a registered agent before the expiry of the notice served by its registered agent under sub-section (4), the Registrar shall strike the name of the company off the Register on the date immediately following the expiry of the period stated in the notice served under sub-section (4) and issue a notice in writing to the company that the name of the company has been struck off the Register.

### **34 Register of Registered Agent**

- (1) The Registrar shall maintain a register of licensed registered agents in which the following details shall be recorded:
  - (a) the name of the registered agent;
  - (b) the address of the registered agent;
  - (c) the names of the individuals authorised to sign on behalf of any firm or corporation that is a registered agent;
  - (d) the date when the registered agent was licensed to act as a registered agent by the Minister under this Act; and
  - (e) in a case where a registered agent ceases to be a registered agent, the date on which the registered agent ceased to be licensed.

- (2) Any change in the details kept by the Registrar in the register of registered agents pursuant to subsection (1) shall be notified immediately by the registered agent to the Registrar, and, the Registrar shall record the change in the register of registered agents.

### **35 Penalty for contravention of Sections 32 and 33**

A company that wilfully contravenes section 32 or 33 is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

## **PART V DIRECTORS, OFFICERS, AGENTS AND ANNUAL RETURN**

### **36 Management by Directors**

Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who shall be individuals.

### **37 Appointment of Directors**

- (1) The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may also elect directors for such term as the directors may determine.
- (2) Each director holds office until his successor takes office or until his earlier death, resignation or removal.
- (3) Subject to any limitations in the Memorandum or Articles
  - (a) a director may be removed from office by a resolution of members or by a resolution of directors; and
  - (b) a director may resign his office by giving written notice of his resignation to the company and the registration has effect from the date the notice is received by the company or from such later date as may be specified in the notice.
- (4) Subject to any limitations in the Memorandum or Articles, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

- (5) Directors of a company incorporated under this Act shall be natural persons of good character above the age of 21 years, who have consented in writing to be appointed directors.
- (6) Directors of a company incorporated under this Act, including the first directors and any other directors subsequently appointed, shall, on or before his appointment as a director, provide to the Registrar his personal financial, character and security information in such form as may be prescribed by the Minister.

### **38 Register of Directors**

- (1) A company incorporated under this Act shall keep a register to be known as a register of directors containing
  - (a) the names and addresses of the persons who are directors of the company;
  - (b) the date on which each person whose name is entered in the register was appointed as a director of the company; and
  - (c) the date on which each person named as a director ceased to be a director of the company.
- (2) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents. The company shall update any changes in the register of directors within 14 days of receiving information as to the changes.
- (3) A copy of the register of directors, commencing from the date of the registration of the company, shall be kept by the registered agent at the registered office of the company, and a further copy shall be lodged with the Registrar.
- (4) The register of directors is prima facie evidence of any matters directed or authorized by this Act to be contained therein.
- (5) A company that contravenes subsections (1), (2) and (3), is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention shall be liable to a like penalty.

### **39 Number of Directors**

- (1) The number of directors shall be fixed by the Articles and, subject to any limitations in the Memorandum or Articles, the Articles may be amended to change the number of directors. The number of directors of a company incorporated under this Act shall not be less than two at any time.



- (2) The directors have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles.
- (3) Subject to any limitations in the Memorandum or Articles, the directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

#### **40 Meeting of Directors**

- (1) Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may meet at such times and in such manner and places within or outside Tuvalu as the directors may determine to be necessary or desirable.
- (2) A director shall be deemed to be present at a meeting of directors if
  - (a) he participates by telephone or other electronic means; and
  - (b) all directors participating in the meeting are able to hear each other.

#### **41 Notice of Meetings of Directors**

- (1) Subject to any requirement in the Memorandum or Articles to give longer notice, a director shall be given not less than 3 days notice of meetings of directors.
- (2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if all the directors, or such majority thereof as may be specified in the Memorandum or Articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

#### **42 Quorum for Meetings of Directors**

The quorum for a meeting of directors is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.

#### **43 Consent of Directors**

Subject to any limitations in the Memorandum or Articles, an action that may be taken by the directors at a meeting may also be taken by a resolution of directors consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

**44 Alternates for Directors**

- (1) Subject to any limitations in the Memorandum or Articles, a director may by a written instrument appoint an alternate who need not be a director.
- (2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

**45 Officers and Agents**

- (1) The directors may, by a resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the company.
- (2) The resolution of directors appointing any person to be an agent of the company may authorize the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.
- (3) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him.

**46 Standard of Care and Annual Reporting**

- (1) Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.
- (2) No provisions in the Memorandum or Articles of a company incorporated under this Act or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the Memorandum or Articles or from any personal liability arising from his management of the business and affairs of the company.
- (3) A company incorporated under this Act shall submit to the Registrar an annual return in the form prescribed by the Registrar at the end of the calendar year after the expiry of the 12 month immediately following its incorporation and thereafter at the end of each calendar year.
- (4) The annual return of a company incorporated under this Act shall:
  - (a) state the identity of the members and directors of the company;
  - (b) state the address of the registered office of the company;
  - (c) contain a statement that the company has solely carried on the business of shipping in the preceding 12 months;
  - (d) contain a statement that to the best of the directors' knowledge, the company is solvent;

- (e) be signed by a director.
- (5) A company that contravenes subsections (3) or (4) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention shall be liable to a like penalty.
- (6) If a company incorporated under this Act shall be in default of submission of its annual return for more than 30 days, the Registrar shall send a notice in writing to the company through its registered agent that the name of the company will be struck off the Register, unless the company, within 60 days from the date of the notice, submit its annual return and pay the penalties due from the company for the default.
- (7) If a company fails within 60 days from the date of the issuance of the notice referred to in subsection (6) to submit its annual return and pay the penalties due from the company for the default, the Registrar shall strike the name of the company off the Register and shall send a notice in writing to the company through its registered agent that the name of the company has been struck off the Register.

#### **47 Records and Reports**

Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the share register, the books of accounts and records and the minutes and copies of consents to resolutions and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

#### **48 Conflict of Interest**

- (1) Subject to any limitations in the Memorandum or Articles, no agreement or transaction between
  - (a) a company incorporated under this Act; and
  - (b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person,is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.
- (2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if

- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and
  - (b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved
    - (i) without counting the vote or consent of any interested director or liquidator, or
    - (ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.
- (3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if
- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting or members; and
  - (b) the agreement or transaction is approved or ratified by a resolution of members.
- (4) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid unless it is shown that at the time the agreement or transaction was authorized, approved or ratified by resolution of directors or by resolution of members the agreement or transaction was unfairly prejudicial to one or more members of the company or to the creditors of the company except that no person who voted in favour of the resolution authorizing, approving or ratifying the agreement or transaction shall be capable subsequently of impugning or objecting to the agreement or transaction.
- (5) Subject to any limitations in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 42 or otherwise.

## PART VI MEMBERS

### 49 Meetings of Members

- (1) Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may convene meetings of the members

of the company at such times and in such manner and places within or outside Tuvalu as the directors consider necessary or desirable.

- (2) Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than 50 percent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.
- (3) Subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if
  - (a) he participates by telephone or other electronic means; and
  - (b) all members participating in the meeting are able to hear each other.
- (4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

## **50 Notice of Meetings of Members**

- (1) Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall give not less than 3 days notice of meeting of members to those persons whose names on the date the notice is given appear as members in the share register and are entitled to vote at the meeting.
- (2) Notwithstanding subsection (1), and subject to any limitations in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 75 percent majority, or such lesser majority as may be specified in the Memorandum or Articles, of the total number of shares entitled to vote on all the matters to be considered at the meeting have waived notice of the meeting; and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.

## **51 Quorum for Meetings of Members**

The quorum for meetings of members for purposes of a resolution of members is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy, one-half of the votes of the shares entitled to vote thereon.

## **52 Voting by Members**

- (1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

- (2) The directors of a company incorporated under this Act may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

### **53 Consents and Notices**

- (1) Subject to any limitations in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.
- (2) Any notice, information or written statement required under this Act to be given by a company incorporated under this Act to members must be served in the manner prescribed in the Memorandum or Articles, as the case may be, or in the absence of a provision in the Memorandum or Articles, by personal service or by mail addressed to each member at the address shown in the share register.

## **PART VII COMPANY MATTERS**

### **54 Service of Process on company**

- (1) Any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it by registered mail addressed to the company, at its registered office.
- (2) Service of any summons, notice, order, document, process, information or written statements to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement
  - (a) was mailed in such time as to admit its being delivered in the normal course of delivery, within the period prescribed for service; and
  - (b) was correctly addressed and the postage was prepaid.

### **55 Books, Records and Common Seal**

- (1) A company incorporated under this Act shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.
- (2) A company incorporated under this Act shall keep
  - (a) minutes of all meetings of
    - (i) directors, and

- (ii) members,
- (b) copies of all resolutions consented to by
  - (i) directors, and
  - (ii) members,
- (3) The books, records and minutes required by this section shall be kept at the registered office of the company or at such other place as the directors determine.
- (4) A company incorporated under this Act shall have a common seal and an imprint thereof shall be kept at the registered office of the company. Unless provided otherwise in the Memorandum or Articles, the common seal shall not be affixed onto any document unless the affixing of the common seal is witnessed by a director of the company.
- (5) A company that wilfully contravenes this section is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

## **56 Inspection of Books and Records**

- (1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of any lawful purpose, request in writing specifying the purpose to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.
- (2) For purposes of subsection (1), a lawful purpose is a purpose reasonably related to the member's interest as a member.
- (3) If a request under subsection (1) is submitted by an attorney for a member, the request must be accompanied by a power of attorney authorizing the attorney to act for the member.
- (4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.

## **57 Contracts**

- (1) Contracts may be entered into on behalf of a company incorporated under this Act as follows:
  - (a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;

- (b) a contract that, if entered into between individuals, is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and
  - (c) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.
- (2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

### **58 Contracts before Incorporation**

- (1) A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, is personally bound by the contract and is entitled to the benefits of the contract, except where
- (a) the contract specifically provides otherwise; or
  - (b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).
- (2) Within a reasonable time after a company incorporated under this Act comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.
- (3) When a company adopts a contract under subsection (2),
- (a) the company is bound by, and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and
  - (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

### **59 Promissory Notes, Bills of Exchange and Power of Attorney**

- (1) A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company
- (a) by or on behalf or on account of the company; or
  - (b) by a person acting under the express or implied authority of the company;



and if so endorsed, the person signing the endorsement is not liable thereon.

- (2) A company incorporated under this Act may, by an instrument in writing, whether or not under its common seal, authorize a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.
- (3) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (2), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

## **60 Authentication or Attestation**

A document requiring authentication or attestation by a company incorporated under this Act may be signed by a director, a secretary or by an authorized officer or agent of the company, and need not be under its common seal.

## **61 Company without Members**

If at any time a company incorporated under this Act has no member, any person doing business in the name of or on behalf of the company shall be personally liable for the payment of all debts of the company contracted during the time.

# **PART VIII WINDING-UP, DISSOLUTION AND STRIKING-OFF**

## **62 Winding Up by Resolution of Directors**

A company incorporated under this Act shall commence to wind up and dissolve if at a meeting of members, the members holding not less than 75% of the votes of the shares of the company (or such other majority as may be specified in the Memorandum or Articles) approve a resolution for the winding up and dissolution of the company.

## **63 Procedure for Winding Up and Dissolution**

- (1) The directors of a company required under section 62 to wind up and dissolve the company must approve an article of dissolution containing
  - (a) a statement of the reason for the winding-up and dissolving;
  - (b) a statement that the company is or is not, and will or will not continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full, if the company is not or will not

- be able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations, a further statement as to the percentage of the claims, debts, liabilities and obligations that the company is able to discharge, pay or provide for payment;
- (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
  - (d) a statement of the estimated time required to wind up and dissolve the company;
  - (e) a statement as to whether a liquidator will be appointed,
  - (f) if a liquidator is to be appointed, a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator and whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions; and
  - (g) if a liquidator is not to be appointed, a statement that the board of directors will oversee the winding up of the company.
- (2) The article of dissolution, duly signed by a director, must be submitted to the Registrar within 30 days of the members' resolution for the winding up and dissolution of the company
- (3) Upon receipt of the article of dissolution, the Registrar may proceed to:
- (a) strike the company off the Register; and
  - (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.
- (4) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved
- (a) the certificate shall be prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and
  - (b) the dissolution of the company is effective from the date of the issue of the certificate.

#### **64 Stay of actions on dissolution**

When a certificate of dissolution has been issued by the Registrar, no action or proceeding shall be proceeded with or commenced against the company.

#### **65 Striking off by Registrar**

- (1) Where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for

an International Company, the Registrar shall serve on the company a notice that the name of the company may be struck off the Registrar if the company no longer satisfies those requirements.

- (2) If the Registrar does not receive a satisfactory reply within 30 days immediately following the date of the service of the notice referred to in subsection (1), he must serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof.
- (3) If the Registrar
  - (a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Company, in reply to a notice served on the company under subsection (1) or (2); or
  - (b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection,

he may proceed to strike off the name of the company from the Register and issue a notice in writing to the company that the name of the company has been struck off the Register.

- (4) If a company fails to pay any fee or penalties due under this Act or any regulations made under this Act, the Registrar shall send to the company a notice in writing that the name of the company will be struck off the Register if the fee or penalties are not paid within 30 days of the notice in writing.
- (5) If a company fails to pay the fee or penalties stated in the notice referred to in subsection (4) within the period stated in the notice in writing, the Registrar shall strike the name of the company off the Register on the date immediately following the expiry of the period stated in the written notice and issue a notice in writing to the company that the name of the company has been struck off the Register.
- (6) A company the name of which has been struck off the Register under this Act remains liable for all claims, debts, liabilities and obligations of the company, and the striking off does not affect the liability of any of its members, directors, officers or agents.
- (7) The notices to be served by the Registrar on a company under this Act shall be sufficiently served if the notice is served on the registered agent of the company.

## **66 Restoration to register**

- (1) If the name of a company has been struck off the Register under sub-section (3) of section 65, the company, or a creditor, member or liquidator thereof, may within 60 days of the service of the notice of striking off on the company, apply to the Registrar to have the name of the company restored to the Register.

- (2) If upon an application under subsection (1) the Registrar is satisfied that
- (a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Company; and
  - (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Registrar may order the name of the company to be restored to the Register upon payment to the registrar of all fees due under this Act and any regulations made under this Act, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

- (3) If the name of a company has been struck off the Register under subsection (5) of section 65, the company, or a creditor, member or liquidator thereof may, within 60 days immediately following the date of the striking-off, apply to the Registrar to have the name of the company restored to the Registrar, and upon payment of all fees due under this Act and any regulations made under this Act, the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.
- (4) If the name of a company has been struck off the Register under subsection (6) of section 33, the company, or a creditor, member or liquidator thereof, may within 60 days of the striking off apply to the Registrar to have the name of the company restored to the Register.
- (5) If upon an application under subsection (4) the Registrar is satisfied that
- (a) a licensed person has agreed to act as registered agent of the company; and
  - (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Registrar may restore the name of the company to the Register upon satisfaction of the condition set forth in subsection (6) and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

- (6) The conditions referred to in subsection (5) are as follows:
- (a) the submission to the Registrar by the applicant for the restoration of a copy of the resolution amending the Memorandum of the company to change the registered agent; and
  - (b) payment to the Registrar by the applicant for the restoration of all fees due under this Act and any regulations made under this Act (including any fees prescribed by the Minister for the restoration of the company to the Register).

- (7) If the name of a company has been struck off the Register under sub-section (7) of section 46, the company, or a creditor, member of liquidator thereof may, within 60 days immediately following the date of the striking-off, apply to the Registrar to have the name of the company restored to the Register.
- (8) If upon an application under sub-section (7) the Registrar is satisfied that:
- (a) the annual return of the company has been duly submitted to the Registrar; and
  - (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Registrar may restore the name of the company to the Register upon payment to the Registrar by the applicant for the restoration of all fees due under this Act and any regulations made under this Act (including any fees prescribed by the Minister for the restoration of the company to the Register).

## 67 Effect of striking off

- (1) Where the name of a company has been struck off the Register, the company, and the directors, officers, members, and liquidators thereof, may not legally
- (a) commence or prosecute any legal proceedings, carry on any business or in any way deal with the assets of the company;
  - (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
  - (c) act in any way with respect to the affairs of the company.
- (2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, officers, member, liquidator or receiver thereof, may
- (a) make application for restoration of the name of the company to the Register; and
  - (b) pending the approval of the application for restoration of the name of the company to the Register,
    - (i) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
    - (ii) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that the name of a company is struck off the Register does not prevent
- (a) the company from incurring liabilities; and
  - (b) any creditor from making a claim against the company upon the restoration of the name of the company to the Register, and pursuing the claim through to judgement or execution.

**68 Dissolution of company struck off**

If the name of a company has been struck off the Register under this Act and remains struck off continuously for a period of 120 days, the company shall be deemed to have been dissolved, and the Registrar shall issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.

## **PART IX INCOME TAXES, STAMP DUTIES AND REGISTRATION OF DOCUMENTS**

**69 No application of Income Tax Act**

- (1) Notwithstanding any provision of the Income Tax Act,
- (a) a company incorporated under this Act;
  - (b) all dividends, interest, rents, royalties, compensations and other amounts paid by the company to persons who are not persons resident in Tuvalu; and
  - (c) capital gains realized with respect to any shares, debt obligations or other securities of a company incorporated under this Act by persons who are not persons resident in Tuvalu,
- are exempt from all provisions of the Income Tax Act, 1992.

**70 No inheritance tax payable**

No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in Tuvalu with respect to any shares, debt obligations or other securities of a company incorporated under this Act.

**71 No stamp duty payable**

Notwithstanding any provision of law relating to the payment of stamp duty,

- (a) all instruments relating to transfers of property to or by a company incorporated under this Act;
- (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
- (c) all instruments relating to other transactions relating to the business of a company incorporated under this Act,

are exempt from the payment of stamp duty.

**72 No registration of deeds and written instruments**

Notwithstanding any provision of law relating to the registration of deeds and written instruments, all deeds and other written instruments relating to

- (a) transfers of property to or by a company incorporated under this Act;
- (b) transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
- (c) other transactions relating to the business of a company incorporated under this Act, including the creation of charges, whether fixed or floating, over the assets of the company to secure the actual, contingent or potential liability of the company or any other party,

are exempt from registration save expressly provided in this Act.

**73 No application of Companies Act and Companies (Winding Up) Act**

The provisions of the Companies Act and the Companies (Winding Up) Act 1991 shall not apply to a company incorporated under this Act.

## **PART X MISCELLANEOUS**

**74 Regulations as to duties of Registrar**

- (1) The Minister may make regulations with respect to the duties to be performed by the Registrar under this Act and in so doing may prescribe the place where the office for the registration of International Companies is located.
- (2) Without limiting or affecting subsection (1), the Minister may make regulations with respect to the conduct, duties and responsibilities of registered agents.
- (3) Without prejudice to the generality of the powers of the Minister under subsection (1) to make regulations as to the duties of the Registrar or the duties and authority of the Registrar expressly provided by other provisions of this Act, the Registrar shall and is authorised:
  - (a) to enforce against the Company, its directors and officers all duties and obligations provided under this Act;
  - (b) to collect any penalties due by reason of the failure or delay of the Company, its directors and officers to perform the duties and obligations;
  - (c) to collect all fees as prescribed by the Minister (whether licence fees or other fees) payable for the incorporation and continual registration of companies incorporated under this Act.

- (4) The Registrar shall not in any circumstances whatsoever be liable to any person for any loss, damage, expense, liability or any other detriment whatsoever that the person may suffer or incur as a result of or in connection with any action taken in the exercise of the duties of the Registrar under this Act (including such duties as may be provided in the regulations to be made by the Minister under this Act, including the determination of the Registrar of any matters or questions put to the Registrar by any person pursuant to any provision of this Act or the regulations to be made by the Minister under this Act).
- (5) All information and documents submitted to the Registrar under this Act by or on behalf of a company incorporated under this Act or in relation to or in connection with the incorporation of a company under this Act shall be held as confidential information and documents by the Registrar, who shall not be obliged nor compelled by any person or authority to disclose or provide access to the information and documents, save disclosure pursuant to an order of the Minister or as required by a Court of competent jurisdiction or otherwise as required by law.
- (6) Without limiting or affection subsection 5, any person may by himself or his attorney, upon full disclosure of the lawful interest in the company, apply to the Registrar for certified true copies of the following documents lodged with the Registrar in relation to the company:
  - (a) The Memorandum and Articles;
  - (b) The share register;
  - (c) The register of directors; and
  - (d) The Annual Return
- (7) The Registrar shall, upon the payment of fees as may be prescribed by the Minister provide the certified true copies of the documents requested under subsection 6.
- (8) The Registrar shall report annually to the Parliament in relation to the following:
  - (a) the number of companies incorporated under this Act in the preceding financial year;
  - (b) the names and registered addresses of all active companies incorporated under this Act;
  - (c) the completion of character tests for all directors of companies incorporated under this Act;
  - (d) the amount of statutory revenue from fees and penalties received in the preceding financial year.



**75 Deputy Registrar**

- (1) The Minister shall appoint the Registrar, and may also appoint one or more Deputy Registrars, and published the appointments by Gazette. The Deputy Registrars shall have the same authority and power as the Registrar in relation to all matters provided under this Act. The Deputy Registrars may be persons who are not citizens of Tuvalu and who do not ordinarily reside in Tuvalu, and the Deputy Registrars may delegate the performance of their duties to their duly appointed officers and agents.
- (2) Without prejudice to the generality of subsection (1), the Minister is authorised and entitled to appoint any Party incorporated outside of Tuvalu, on such terms and for such tenure as the Minister shall deem appropriate, as a Deputy Registrar to perform in a place outside of Tuvalu all duties and functions of a Deputy Registrar under this Act, including but not limited to the registration of companies and the administration of the Register under this Act.

**76 Regulations as to fees and registered agent**

- (1) The Minister may make regulations and prescribe the fees (whether licence fees or other fees) payable for the incorporation and continual registration of companies incorporated under this Act.
- (2) Without limiting or affecting subsection (1), the Minister may make regulations with respect to the duties and responsibilities of registered agents.
- (3) All information, documents and records received, kept and maintained by a registered agent from and/or on behalf of a company incorporated under this Act or in relation to or in connection with the incorporation of a company under this Act shall be held as confidential information, documents and records by the registered agent, who shall not be obliged nor compelled (unless expressly provided in this Act) by any person or authority to disclose or provide access to the information, documents and records, save disclosure pursuant to an order of the Minister or as required by a Court of competent jurisdiction or otherwise as required by law.

**77 Certificate of good standing**

- (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that
  - (a) the name of the company is on the Register; and
  - (b) the company has paid all fees, licence fees and penalties due and payable.
- (2) The certificate of good standing issued under subsection (1) must contain a statement as to whether

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
  - (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
  - (c) the company is in the process of being wound up and dissolved; or
  - (d) any proceedings to strike the name of the company off the Register have been instituted.
- (3) A certificate of good standing will not be issued for a company incorporated under this Act unless the Company has submitted its annual return as required under this Act.

## **78 Commencement**

This Act comes into operation on such day as the Minister may, by notice published in the Gazette appoint.