

COMPANIES AND SECURITIES LAW REVIEW COMMITTEE

REFERENCE BACK FROM THE WORKING PARTY

ON

FORMS OF LEGAL ORGANISATION

FOR SMALL BUSINESS ENTERPRISES

DECEMBER 1986

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CLOSE CORPORATIONS

REFERENCE BACK FROM THE WORKING PARTY

The CSLRC has considered the Report of the Working Party on Forms of Legal Organisation for Small Business (August 1986) and makes the following reply to matters raised therein.

The Committee suggests that for the purposes of sub-section 5B(2) (b) of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act, this paper be regarded as a Supplement to its Report dated September 1985.

IMPLICATIONS OF CSLRC PROPOSALS' FOR EACH PARTY TO THE FORMAL AGREEMENT

Revenue

While supporting the reduction of establishment costs for close corporations, the Committee, in its Report, did not put forward any specific proposals as to the statutory fees that may accompany the lodgement of the Founding Statement and any amendment of particulars. It remains open to the parties to the Formal Agreement to devise a fee structure that minimises revenue loss or makes the introduction of close corporations revenue neutral. The Committee believes that there is no strong justification for requiring an annual return independently of revenue considerations. The Committee, however, recognises the revenue implications of the liquidator's recovery fund proposal (Recommendation 42) but considers that this cost could be in-built into the fee structure.

Legal

The Committee queries whether the reduced accounting and reporting requirements for close corporations would necessarily hamper their inspection and investigation, given that the current founding statement would contain the key

information necessary for this task. Furthermore the extended grounds of recovery against members personally in the event of the insolvency of a close corporation (Recommendation 26) may, in many instances, lessen the need for protracted investigation before the corporate veil could be lifted.

Administration

The Committee perceives a benefit in any system that would relieve or lessen the administrative burden on CAC's arising from the processing of documents and thereby allow them to place greater emphasis on the investigation of corporate affairs generally. The Committee questions whether close corporations would entail any greater inspection costs than existing EPC's and thus queries the statement in the Working Party Report that the recognised "significant savings" in terms of staffing and equipment in relation to the processing of close corporation documents would be "offset by the increase in investigation costs ... with respect to matters relating to the continued existence of defaulting bodies".

Public Record

The CSLRC designed the Founding Statement requirements and the change of particulars obligations (CSLRC Report [69]-[70]; [120]-[125]) to provide interested persons with key information about close corporations. For instance a close corporation will remain in existence until its formal liquidation and/or withdrawal of the Founding Statement. During its lifetime all persons named in the current Founding Statement as members shall be entitled to bind the company and may be subject to personal liability in the event of its insolvency (see further: Recommendation 26). Accordingly the CSLRC proposals do ensure that "scheme participants and potential members and creditors of CC's should at least be able to ascertain whether a business is still operating and the names of its principals". The Founding Statement provides satisfactory evidence of the existence of a close corporation.

The Committee believes that the comment in the Working Party Report that "the lack of ongoing reporting requirements ... will make it impossible for interested persons to obtain details of the financial condition ... of a CC" is misdirected. No registration system can guarantee the accuracy of such particulars and outsiders would be unwise to rely upon public records to judge the current financial position of companies. It was for this reason that the financial reporting obligations applicable to EPC's were not adopted in the close corporation proposals.

Whether the perceived advantages of the proposed close corporations can be obtained by modifying the rules for exempt proprietary companies

The Working Party in its Report canvassed three options:

Option A: modification of the rules relating to EPC's

Option B: provision for CC's (either by separate legislation or as part of the companies legislation) and a prohibition on future incorporation of EPC's;

Option C: provision for CC's and EPC's (new and old) i.e. CC's as an additional choice.

The Committee reiterates its support for the introduction of close corporations and does not therefore support Option A which would merely modify the rules relating to EPC's to accommodate various CSLRC Report recommendations. This option, as detailed in Attachment 2 of the Working Party Report, would fail to implement two of the overall objectives for close corporations, identified by the CSLRC in its Report:

- * creation of "directorless" corporations by elimination of the director - shareholder distinction;
- * regulation of the corporation's internal affairs by rules appropriate to a partnership.

This may be seen, for instance, in the failure of Option A to implement the CSLRC Recommendations 14; 15; 17; 21; 22; 23; and 32.

As between Option B and Option C, the Committee favours the former as avoiding a proliferation of regimes, and also expresses its strong agreement with the Commonwealth/ACT and NCSC observations at para 11 and para 12 of the Working Party Report.

The CSLRC has considered whether, if either Option B (preferred) or Option C is adopted, this should be by a separate Act or by amendment to the Companies Code. The Committee believes that convenience to users and their advisers is an important consideration and this could be equally achieved by having close corporations as a discrete and self-contained Part of the Companies Code as by any separate legislation. A separate Part of the Companies Code could, for instance, set out in full the provisions about the founding statement, obtaining and relinquishing membership, rights as between members, external relations, interests of members and their disposal, the duties and members, and the grounds for imposing personal liability on members. Other matters (e.g. CSLRC recommendations 9; 13; 19-20; 31; 33-39; and 43) could be cross referenced to relevant provisions of the Companies Code. Nevertheless, the Committee has prepared a draft Close Corporations Bill (see Appendix) for the limited purposes of determining its possible size and as a checklist for the close corporation provisions, in whatever form they may ultimately be drafted. (The draft Bill does not include necessary provisions for recognized corporations and may need amendment in consequence of matters discussed in this Report.)

MATTERS ARISING FROM VARIOUS CSLRC RECOMMENDATIONS**ATTACHMENT 1**Recommendations 3 & 20

The CSLRC would not oppose a requirement that the word "Limited" or the abbreviation Ltd. be added to the CC's name.

Recommendations 4 & 6

The CSLRC restates its preference for Option B, i.e., a prohibition on future incorporation of EPC's.

Recommendation 7

The CSLRC recognises that the proposed 10% amendment is consistent with maintaining the simplicity of the close corporation concept. However the Committee feels that the policy behind the amendment could be too easily circumvented e.g. by setting up a series of CC's each with a 9.9% shareholding of a company. Rather the Committee considers that for the reasons indicated at [45]-[46] of its Report, the greatest potential problems lie in allowing close corporations to act as holding companies and, on this basis, would retain the prohibition in the form stated in CSLRC Recommendation 7.

Recommendation 8

The CSLRC see force in the Working Party suggestion that a majority of members of a Close Corporation should be resident in Australia and would support the proposed amendment.

Recommendation 9

The Committee agrees that it may be too artificial and too easily open to circumvention to allow a disqualified person to remain as a member of a close corporation even where the

Association Agreement expressly excluded that person from participation in management. The Committee supports the majority proposal of an outright prohibition (subject to a right to appeal to the court) on disqualified persons being members of a close corporation. Where disqualified persons seek to act on behalf of close corporations, the rights of outsiders are protected under CSLRC Recommendations 17; 18.

Recommendations 11 & 12

The Committee agrees with the proposed amendment that the Founding Statement include particulars of the residential address of members, but not particulars of the accounting officer. The Committee envisages that the Founding Statement details would be provided on a standard form prescribed by regulation.

The CSLRC Report argued against any provision for lodging a periodic or annual return, given the continuing obligation on close corporation members to maintain the accuracy of the Founding Statement (see further - Public Record). The Committee queries whether an annual return requirement would serve any significant function other than as a means of revenue raising and would not support the proposed amendment on these terms alone.

Recommendation 16

The Committee supports the proposal that close corporations be prohibited from acting as a trustee under a will, settlement or declaration of trust, as consistent with its original recommendation.

Recommendation 22

The Committee agrees that a prescribed form of notice for retiring members be provided for in the legislation.

Recommendations 24 & 29

The CSLRC Report on "A Company's Purchase of its Own Shares" should be available to the Ministerial Council in 1987.

Recommendation 26

The proposed amendments raise difficult policy issues. On the one hand it is arguable that given the minimum reporting and accounting requirements and the degree of internal flexibility enjoyed by close corporations, the veil of incorporation should be thin. Limited liability is a privilege which should be lost if fundamental obligations are not complied with. However it would seem preferable to be able to identify some causal relationship between a breach and the insolvent state of a close corporation. The Committee is concerned that some of the additional proposed grounds for imposing personal liability may have little or no apparent correlation with insolvency or not necessarily constitute the failure of fundamental obligations, and other penalties or civil remedies may be more suitable. The Committee feels that the Working Party's comment that "imposing greater personal liability will provide an effective and self-enforcing sanction for breaches of significant obligations and avoid the necessity of relying on time-consuming and administratively burdensome regulatory sanctions" may be an over-reaction. Furthermore these extended grounds, as they stand, may constitute a marked disincentive for persons to favour close corporations over proprietary companies (especially if EPC's are retained) thus undermining the function of close corporations as commercial corporate vehicles.

Taking each proposed criterion in turn:

(a) Exceeding the membership limit. The Committee notes that where a proprietary company exceeds the membership limit s71(2) (3) (8) of the Companies Code imposes a penalty on the company (and its defaulting officers) and its possible

conversion to a public company. The Committee believes this to be a more appropriate remedial model e.g. loss of close corporation status, and this is to some extent already reflected in Recommendation 4 of the CSLRC Report: "Any increase in membership of a close corporation above the maximum shall constitute grounds for winding up".

(b) Breach of residence requirements. Elsewhere (Recommendation 8) the Working Party and CSLRC agreed that a majority of members of a close corporation should be resident in Australia thereby increasing the possibility that breaches will occur. Where a breach takes place, liability would fall principally on those still resident in Australia as it may be impossible to enforce an order against those members who have transferred their assets and residence overseas. This means that those responsible for activating the breach may be least likely to be answerable for its consequences.

(c) Failure to lodge or notify changes in required particulars. The CSLRC Report recommended various civil consequences in the event of such failure: see CSLRC Report: [70]; [120] - [125]. The Committee considers this to be an adequate and more appropriate response.

(d) Failure to keep proper accounting records. The Committee sees this as a breach of a fundamental statutory obligation and, in principle, favours this as a further legislative grounds of recourse against members personally.

The Committee is drawn to the draft legislative format for insolvent trading by companies, in the forthcoming Australian Law Reform Commission Discussion Paper, whereby failure to maintain proper accounting records would create a presumption of insolvency for the purposes of s556 of the Companies Code (as amended). Under the terms of the ACRC draft:

"If it is proved that:

(a) (i) the company has failed to keep such accounting records as correctly record and explain the transactions of the company (including any transactions as trustee) and the financial

position of the company and so as to enable a convenient and proper reconstruction of its financial affairs to be made by the liquidator at any time during its trading or business operation, or

(ii) accounting records (whether kept or not) have not been produced to the liquidator,

and that

(b) the company is unlikely to pay its unsecured creditors more than 50 cents in the dollar,

then circumstances of insolvency in relation to that company shall be presumed, unless the contrary is proved to have existed:

(c) from the time when the company commenced to carry on business, or

(d) from a date 12 months immediately before the commencement of the winding up of the company,

whichever is the later.

The ALRC draft, in imposing personal liability for insolvent trading, provides that:

"it shall be a sufficient defence if the [member] proves that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the responsibility of seeing that the duty imposed by this provision was complied with and was in a position to discharge that responsibility".

(e) Knowingly permitting a disqualified person to act as a member of a CC. Given that there may be a willful element involved, this may constitute a stronger ground for lifting the corporate veil than say, (b) or (f). However the Committee does not believe that a breach of this provision

alone should automatically result in personal liability and so would not elevate this to a ground of recourse in its own right.

(f) Failure to disclose the name of the CC or its status in full in any business document. The Committee is concerned that this may be too harsh, given the uncertainties over what is included within the concept of business documents and the possibility that one or more members may breach the provision without the knowledge of, or contrary to the directions of, other members.

(g) Non payment of lodgement fees. A fine, in the form of a late payment fee, and/or striking off the close corporation would usually suffice and the further recourse to unlimited personal liability on this ground alone would be difficult to justify.

In summary the Committee takes the view that none of the proposed extra criteria, apart from (d) - failure to keep proper accounting records - should necessarily result in the loss of limited liability protection. Instead each criterion, other than (d), could be treated as an instance of failure or inadequate performance by members of their statutory duties and be available to the court, at its discretion, to lift the corporate veil should insolvency take place subsequent to the breach. The court could therefore impose unlimited liability in instances of more serious breach and/or where the breach appeared to have some causal connection to the insolvency. It would be inconsistent with this general discretionary approach to include any provision that members lose their limited liability status for the period of default irrespective of whether the close corporation was solvent at the time.

As regards the Tasmanian proposal that automatic disqualification from membership should apply to a member of a close corporation that cannot pay its unsecured creditors 50c in the dollar, the CSLRC believes that this matter may be adequately covered in its Recommendation 9. (Note also the

ALRC forthcoming proposal for amendment to s556 of the Companies Code).

Recommendation 30

The Committee has given further consideration as to the accounting obligations of close corporations, given that failure to keep proper accounting records is one of the recommended grounds for recourse against members personally in the event of the insolvency of a close corporation. Alternatives considered included imposition of the requirements of Schedule 7 in its complete or a simplified form, an obligation to maintain and disclose key financial data, or adoption of the terms of the 1936 NSW Companies Act that companies keep a cash book, a general journal, and a general ledger.

The Committee concluded that the statutory accounting requirements should remain simple and rudimentary in their general terms and the current CSLRC formulation would fulfil that function. If greater specificity over and above this was considered necessary or useful, then the legislation might, by regulation, adopt the precedent agreed between the CAC's and The Insolvency Practitioners Association as to what represents the keeping of proper books and records for EPC's. Under this precedent, a company should keep its accounting records in the following manner:

"All prime source documents including sale dockets, duplicate receipts, duplicate deposit slips, invoices, payment vouchers, cheque butts and bank statements must be retained and filed in an orderly manner. These documents should record the dates and amounts involved and contain sufficient details to explain the nature of each transaction. The prime source documents are used regularly throughout the financial year to write up the company's cash receipts and cash payments journal.

The nature of each transaction must be properly classified at the time it is entered into the cash books to facilitate postings to the general ledger and the maintenance of accurate listings of debtors and

creditors. The cash books should be regularly reconciled to the bank statements.

A general journal or the equivalent thereof is also required to be maintained. Opening journal entries detailing the initial share capital and assets and liabilities of the company must be recorded and thereafter all non-cash transactions such as provisions for taxation and dividends, depreciation, pre-payments, accruals, adjustments to debtors' and creditors' balances, purchases and sales of assets and loan account transactions must be entered in the general journal. Full and detailed narrations must be made with each entry to fully explain the transaction.

A general ledger or the equivalent thereof must be completed and balanced at least at the end of each financial year. All revenue and expense items are then transferred to the profit and loss statement and all asset and liability balances recorded in the balance sheet. The company's financial accounts must show a true and fair view of the state of affairs of the company as at the end of each accounting period".

Recommendation 40:

The Working Party Report proposes that loans to the corporation by members and parties related to members be subordinated to external creditors. The Committee sees force in the argument that without the extension to related persons, the deferral provisions may be ineffective as loans by relatives of members to the corporation could be easily contrived e.g. a member lending to a relative who then lends money to the close corporation. The extension to related persons will improve the position of external creditors and possibly encourage the flow of loan capital from these sources.

Recommendation 42

The Committee agrees that any decision concerning the establishment of a liquidator's recovery fund should await the outcome of the ALRC Report.

ATTACHMENT 2

Recommendations 5 & 11

The Committee supports the Working Party comments in the event that Option A is adopted by the Ministerial Council.

Recommendation 14

As regards close corporations, the partnership principles embodied in the legislation would provide a rudimentary Association Agreement. The Committee doubts the utility of drafting a more detailed model Association Agreement.

Recommendation 24

As per Attachment 1

Recommendation 26

As per Attachment 1

Recommendations 27 & 28

The Committee supports the Working Party comments in the event that Option C is adopted by the Ministerial Council.

CSLRC RESPONSE TO THE SUBMISSION
OF THE
COMPANY DIRECTORS ASSOCIATION OF AUSTRALIA

Representatives of the Association met with the Committee on Thursday 4th December, for the purpose of discussing the issues contained in the Association's letter dated 2nd December (p 17-19). The Committee makes the following response.

Registration v no Registration

The Committee strongly favours a system of registration of close corporations through the CAC's, effected by the lodgement of a Founding Statement. The Committee believes that it is incorrect to draw any analogy with the freedom from registration of sole traders and partnerships as, unlike corporations, they do not constitute legal entities separate from their participants. Incorporation by unregistered deed alone would be inherently uncertain, and may create substantial procedural and evidential difficulties, particularly where deeds were lost or destroyed. Furthermore, registration provides outsiders with key information about the existence of a close corporation (cf Companies Code s549) and its members. The submission suggestion that incorporation be depended upon the issuing of an income tax file number would not ensure outsiders gaining expeditious access to necessary information about the corporation, e.g. whether a particular person was a member and thus able to bind the corporation. A CAC registration system would constitute an efficient and effective vehicle for this end.

The Committee also points out that the alternative suggested in the Association's submission, namely that the name and addresses of the controllers be displayed on the letterheads and documents of the company, and in the public area of the business, could involve close corporations in significant costs, consequent to any change in these particulars.

Controllers v Directors v Partners

The Association's submission raises the problem of accomodating the "passive investor", i.e. the person who wishes to participate in the capital growth as well as profits of the corporation, but without any involvement in management or possibility of personal liability. Under the CSLRC proposals all members, passive as well as active, are potentially open to personal liability in the event of the insolvency of a close corporation (Recommendation 26).

The Committee believes that the solution lies in the investment method employed. Instead of being a member, the "passive investor" could lend funds to the corporation with the loan return and redemption provisions geared to the corporations performance, including capital growth and/or profits. The lender would therefore participate in growth, but without the problem of personal liability, while being ranked higher than members in any return of funds in a winding up.

The Committee does not support the Association's proposal that particular "controllers" of the corporation carry automatic liability for the debts of the business. As pointed out at para [139] of the CSLRC Report, this would introduce "strong if not compelling disincentives to the use by entrepreneurs of the close corporation entity, in comparison with limited liability proprietary companies". The Committee is also concerned that incorporators may be tempted to set up straw controllers in an attempt to avoid personal liability. Instead, the Committee argues strongly for the introduction of defeasible limited liability (Recommendations 25; 26).

Trustee Relationships

For the reasons set out at para [91] of the CSLRC Report, the Committee maintains its objection to close corporations acting as trustees.

Liquidators' Funds

As indicated elsewhere (p12: Recommendation 42) the Committee agrees that any decision concerning the establishment of a recovery fund should await the outcome of the Australian Law Reform Commission Report on Insolvency.

Compulsory use of Form

As indicated elsewhere (p4) the Committee favours Option B over Option C.

The Company Directors Association of Australia

FEDERAL SECRETARIAT
TELEPHONE: 29 4731



275 GEORGE STREET,
SYDNEY, 2000.

December 2, 1986.

Mr. John Kluver,
Research Director,
Company and Securities Law Review Committee,
HLC Centre
Castlereagh Street
SYDNEY NSW 2000

Dear Mr. Kluver,

The CSLRC and this Association share a great deal of common ground about the need and usefulness of a business structure for Small Enterprise.

I enclose a short summary of the large points of difference between us; the most important is registration v. no registration.

Perhaps you could table this material at your meeting on Thursday.

The enclosed letter from Professor R. Baxt might be illuminating for the committee.

I profess to a great disappointment about the communications barriers which have arisen between outside bodies and the law making mechanism as a result of the introduction of the co-operative scheme. The close corporation proposal is no different. The NCSC promised to consult and inform as to the progress of the internal review committee into this matter. It did not.

Ideas can never really be transmitted purely by collection of written responses. Nor can better ones be argued in a vacuum.

Naturally I would like the opportunity to discuss some of these ideas with your committee on Thursday and to argue for them. Indeed, the ready response by outside persons and bodies is encouraging. However, it does not seem that there is any

way to penetrate the bureaucratic screen surrounding the Ministerial Council. Therefore no debate is possible, as now no parliament offers the necessary forum.

Yours sincerely,

A handwritten signature in cursive script that reads "Arthur Yeomans". The signature is written in black ink and is positioned below the closing "Yours sincerely,".

A.B. Yeomans
Executive Director

THE PROPOSAL FOR A SMALL ENTERPRISE ACT

I won't canvass the mutually agreed view that a simplified form of incorporation as I believe that's common to the CSLRC, myself and the CDA. This paper focuses upon the differences:

2. Registration V. no registration:

Since sole traders and partnerships have functioned without society perceiving they need to be registered and controlled, there is no need for a new small incorporated enterprise to be registered, either.

Registration is said to provide information about the proprietors and directors of the corporation. My proposal is that, instead, the names and addresses of the controllers be displayed on the letterheads and documents of the company, and in the public area of the business.

In Practical terms, this gives greater utility of finding than a register, (often'out of date) at the CAC.

Is there any other valid reason for registration? It is certainly not necessary to bring the corporation into existence. I believe signing the standard deed provided by the Small Enterprise or Close Corporaation Act (from which no variation would be possible) is sufficient.

A suggestion made by another person was that issuing of the corporation's tax number by the Taxation Commissioner would be a suitable and traceable starting date.

The present companies registers approach 800,000. They are growing at 30,000 plus per annum (time prevents me from doing the exact sums today).

If this tide could be turned back and reduced by an easy transfer system for present exempt proprietary companies to become SEAs it would save in excess of \$100,000,000 per annum in filing fees alone, plus considerable reduction in internal filing costs to business.

In reality, company registrations and returns are a substantial source of Tax revenue. Exempt proprietary companies also subsidise the CAC's administration of large companies.

In devising the right structure, we should not allow the tax revenue argument to cloud the issue. Governments must deal with that separately.

Controllers vs. Directors vs. Partners.

My paper allowed for passive investors whose liability is absolutely limited. In the practical world, unless such provision is provided then the structure is of no utility. Capital raising by shareholding amongst family and friends is the first and often only source of funds for small business.

To protect creditors from fraud and irresponsibility, I suggested that one (if a one-proprietor business) or two (if two or more proprietors) proprietors become "controllers" and carry the liability of the debts of the business. (The chief executive of the SEA must be a controller).

My view is that it is hard to think of an occasion when the liability of the directors of an exempt proprietary company or the Close Corporation will be less.

The difference is that in the SEA the liability is obvious and in the Close Corporation litigation will lead to the same result.

If the CSLRC believes my logic is wrong, I would not object to a concept of defeasible liability as long as it did not extend liability of any sort to the passive shareholders.

Trustee relationships:

Tax laws are ephemeral and the ubiquitous family trust and its trustee company, with working family members as directors of that trustee company, has had its wings well and truly clipped. There seems no justification to prevent a small enterprise from being a trustee on the grounds of preventing tax avoidance. That's for the tax act.

For purposes of disclosure of interests, disclosure of the existence of a trust is effective. Moreover, if my proposal about liability of controllers is accepted, the matter is effectively solved.

Liquidators' funds

This proposal is quite unacceptable. Sole traders, partnerships, and companies are not and should not be called upon to pay the costs of liquidation of other persons. Nor should a SEA or a CC.

Compulsory use of form:

I see no justification whatsoever for compelling persons to use a Close Corporation form and doing away with the Exempt proprietary company. There are many circumstances and types of businesses, investment arrangements and so on which will make the Close Corporation unsuitable. To push those people into the expenses of a proprietary company is quite unfair.

THE COST AND SOCIAL EFFECT OF A TRIAL

As there is no ongoing cost, the Small Enterprise Act can be tried without detriment to the public purse. It also provides no risks to any persons. Therefore it is as fail safe as a sole trader or partnership.

If as time goes on familiarity with it makes it popular, then government must assess its taxation raising position.

APPENDIX

CLOSE CORPORATION ACT

An Act to make provision for the government of the Australian Capital Territory in relation to' the formation of close corporations and the regulation of close corporations formed in that Territory.

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I - PRELIMINARY

1 This Act may be cited as the Close Corporations Act 19

2 This Act shall come into operation on a date to be fixed by Proclamation.

3 (1) The objects of this Act are to make provision for the government of the Australian Capital Territory in relation to tile formation of close corporations and the regulation of close corporations formed in that Territory to provide a convenient form of legal organization primarily for small business operations, and this Act has effect, and shall be construed accordingly.

(2) In its application to and in relation to close corporations, this Act applies to and in relation to natural persons, whether resident in the Australian Capital territory or in Australia or not. and to all bodies corporate or unincorporate, whether formed or carrying on business in that Territory or in Australia or not, and extends to acts done or omitted to be done outside that Territory, whether in Australia or not.

(3) The Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 applies to this Act.

4 [Repeals]

5 [Definitions]

PART II - ADMINISTRATION

6 [Administration to be by NCSC]

? The provisions of Part II Division I of the Companies Act 1931 relating to powers of inspection shall apply in relation to a close corporation as if for a reference to a company in

Part II. wherever occurring, there appeared a reference to a close corporation.

8 The provisions of Part II Division 3 of the Companies Act 1981 relating to registers and registration of documents shall apply in relation to a close corporation as if a reference therein to a requirement of the Companies Act included a reference to a requirement of this Act.

PART III- CONSTITUTION OF CLOSE CORPORATIONS

9 Subject to this Act, any one or more, but not exceeding 10, natural persons associated to carry on a lawful business t~ common with a view of profit, of whom a majority reside in Australia or an external Territory, may, by complying with the requirements of this Act, become a close corporation.

10 An application for the registration of a close corporation shall be made by lodging with the Commission a founding statement in the form appearing in Schedule 1 to this Act which shall set out:

(a) the name of the corporation;

(b) the address of each place in the Territory and elsewhere in which the business of the corporation is proposed to be carried on;

(c) where the business is proposed to be carried to be carried on in more than one place in the Territory, a description of one of those places as the principal place of business;

(e) the following particulars about each person who proposes to be a member of the corporation on its registration:

(i) the christian or other given names and family or surname;

(ii) any former christian or other given names and family or surname;

(iii) the address of his usual place of residence;

[(iv) the file number (if any) allocated by the Commissioner of Taxation of the Commonwealth:]

and be signed by each of the applicants.

(2) Strict compliance with the substance of, and provision of the information required by, the form in Schedule 1 is necessary unless the Commission otherwise approves but strict compliance with the style of that form is not necessary unless the Commission so requires.

(3) Subject to this Act, the Commission shall, upon the lodging o~ the founding statement under sub-section (1), register the founding statement.

(4) On the registration of the founding statement, the Commission shall certify under its common seal that the association then consisting of persons named in the certificate is, on and from the date specified in the certificate, incorporated as a close corporation.

(5) The Commission shall keep a copy of the certificate of incorporation and sub-sections 31(2) and 31(5) of the Companies Act 1981 shall apply to that copy as if it were a document lodged with the Commission.

(6) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, the person or persons who applied under sub-section (1), together with such persons as from time to time become members of the corporation are a close corporation by the name set out in the certificate of incorporation.

(7) The close corporation:

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

(b) is capable of suing and being sued;

(c) has perpetual succession;

(d) has power to acquire, hold and dispose of property; and

(8) The members as such shall have no liability for the debts of the corporation or to contribute to the property of the corporation in a winding up, except to the extent that they are declared personally liable for the debts of the corporation under sections [].

11 (1) The provisions of sections 38, 40, 43, 58, 63 and 65 of the Companies Act 1981 relating to names of companies shall apply in relation to a corporation as if:

(a) a reference to a company, wherever occurring, were a reference to a corporation; and

(b) a reference to section 35 in section 40 were a reference to section [] of this Act.

(2) A corporation may have, as its name, the expression "Australian Capital Territory Close Corporation Limited Number" followed by a number approved by the Commission for this purpose.

(3) Where a proposed corporation is to be registered with a name other than one referred to in sub-section (2):

(a) the corporation shall not be registered unless the name under which it is proposed to be registered is reserved in respect of the corporation; and

(b) the corporation shall have the words "Close Corporation Limited" as part of and at the end of its name.

(4) A description of a corporation shall not be taken to be inadequate or incorrect by reason of the use of:

(a) the abbreviation "CC" in lieu of the words "Close Corporation" contained in the name of the corporation;

(b) the abbreviation "CL" or "Cl" in lieu of the word "Close" contained in the name of the corporation;

(c) the abbreviation "CORP" or "Corp" in lieu of the word "Corporation" contained in the name of the corporation;

(d) the abbreviation "LTD" or "Ltd." in lieu of the word "Limited" contained in the name of the corporation;

(e) the symbol "&" in lieu of the word "and" contained in the name of the corporation;

(f) any of those words in lieu of the corresponding abbreviation or symbol contained in the name of the corporation; or

(g) the omission of any full point.

12. Section 218 of the Companies Act 1981 relating to publication of the name of a company shall apply in relation to a corporation as if:

(a) a reference to a company, wherever occurring, were a reference to a corporation;

(b) a reference to an officer, wherever occurring, were a reference to a member; and

(c) a reference to a registered office, wherever occurring, were a reference to a principal place of business.

13 (1) If, in relation to a corporation, any change is made or occurs in:

(a) an address of any place in the Territory or elsewhere where the corporation's business is carried on;

(b) the address of the corporation's principal place of business;

(c) the membership or the name of any member; or

(d) the address of any member

the corporation shall within [] days lodge with the Commission a return of changed particulars in the form prescribed in Schedule 2 to this Act, signed by all members and specifying the change.

(2) A return of changed particulars in respect of termination of a person's membership by resignation shall also be signed by the person who resigns.

(3) Subject to this Act, the Commission shall upon the lodging of the return of changed particulars, register it.

(4) If a corporation fails to lodge a return of changed particulars in accordance with sub-section (1), the Commission may on its own initiative or on application by any member or creditor of the corporation serve on such member as the Commission thinks fit a reminder to make good the default within [] days of the date of the reminder.

(5) If a person on whom a reminder has been served fails to comply with it, the Commission may direct that person, by written notice served on him, to make good the default within [] days of the date of the notice.

(6) A person who fails, without reasonable cause, to comply with such a direction is guilty of an offence.

Penalty: \$ or imprisonment for [,or both].

14 In each year during the period of 28 days after the anniversary of the date of registration, of a corporation, the corporation shall lodge with the Commission an annual return in the form prescribed in Schedule 3 to this Act which shall set out the following particulars as they relate to matters existing at that anniversary:

- (a) the name of the corporation;
- (b) a concise description of the true nature of the business carried on by the corporation;
- (c) a concise description of the true nature of any business formerly carried on within the ~ preceding twelve months;
- (d) the address of each place in the Territory and elsewhere at which the business of the corporation is carried on;
- (e) the principal place of business of the corporation in the Territory if it carries on business in more than one place in the Territory;
- (f) the following particulars about the persons who are members:

(i) the christian or other given names and family or surname;

(it) any former christian or other given names and family or surname;

(iii) the address of the usual place of residence;

[(iv) the file number allocated by the Commissioner of Taxation of the Commonwealth.]

15 A statement in a founding statement, in a return of changed particulars or in an annual return, that a place of business of the company is its principal place of business shall be conclusive evidence that that place of business remains the company's principal place of business up until the time when there is lodged with the Commission a return of changed particulars which specifies a new principal place of business.

16 No person shall be deemed to have knowledge of any particulars merely because those particulars are stated, or referred to, in any founding statement, return of changed particulars or annual return registered by the Commission or lodged with it but this section shall not prevent a person having notice of the contents of any document relating to charges that may be registered by the Commission or be lodged with it.

17 (1) Any company having 10 or fewer members all of whom qualify for membership of a corporation and which:

- (a) does not have partly-paid shares;
- (b) is not a trustee under a will, settlement or declaration of trust;
- (c) is not a holding company;

may be converted into a corporation, provided that every member of the company becomes a member of the corporation.

(2) In relation to a conversion referred to in sub-section (1) there shall be lodged with the Commission:

- (a) an application for conversion in the prescribed form signed by all members of the company, containing a statement that upon conversion the assets of the corporation, fairly valued, will exceed its liabilities, and that after conversion the corporation will be able to pay its debts in full as they fall due in the ordinary course of its business: and
- (b) a founding statement complying with section [].

(3) If the provisions of sub-section (2) have been complied with, the Commission shall, unless it has reason to believe that the company has failed to comply with any provision of the Companies Act 1981:

(a) register the founding statement;

(b) satisfy itself that, simultaneously with such registration, the registration of the memorandum of association and the articles of association (if any) of the company are cancelled;

(c) issue a certificate of incorporation as provided by section [] with the addition of:

(i) a statement that the corporation has been converted from company; and

(ii) a statement of the name of the former company.

(4) On the registration of a corporation converted from a company, the assets, rights, liabilities and obligations of the company shall vest in the corporation.

(5) Any legal proceedings begun by or against the company before the registration of the corporation may be continued by or against the corporation, and any other thing done by or in respect of the company shall be deemed to have been done by or in respect of the corporation.

(6) The conversion of a company into a corporation shall in particular not affect:

(a) any liability of a director or officer Of the company to the company or to any other person pursuant to any provision of the Companies Act 1981; or

(b) any liability of the company, or of any other person, as a surety.

(7) The corporation shall forthwith after its conversion from a company, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all parties to contracts or other legal obligations or to legal proceedings in which the company was involved at the time of conversion.

(8) On the production by a corporation which has been converted from a company of its certificate of incorporation as a close corporation to any registrar, officer or authority charged with the maintenance of a register under any law, whether public or private, and on compliance with all the requirements pursuant to any such law as to the form Of application (if any) and the payment of any required fee, that person or authority shall make in the register all such alterations as are necessary by reason of the conversion of the company into a corporation: Provided that no stamp duties shall be payable in respect of such alterations.

(9) If a corporation is converted into a company in accordance with the provisions of the Companies Act 1981, the

registration of the founding statement of the corporation shall be cancelled simultaneously with the registration of the memorandum of association and the articles of association (if any) of the company in terms of that Act.

PART IV - MEMBERSHIP

18 A corporation may at its incorporation have one or more members, but at no time shall the number of members exceed 10.

19 (1) Subject to the provisions of this section, only natural persons may be members of a corporation and no body corporate shall directly or indirectly (whether through a trustee, nominee or otherwise) hold a member's interest in a corporation.

(2) The following persons may be members of a close corporation:

(a) any natural person entitled to a member's interest;

(b) a natural person or a body corporate who is a trustee of a testamentary trust entitled to a member's interest, provided that:

(i) no body corporate is a beneficiary under the will or of the trust; and

(ii) if the trustee is a body corporate, that body corporate is not, directly or indirectly, controlled by any beneficiary under the will or of the trust; and

(c) a natural person or a body corporate by virtue of his or its office, who, in the case of a member who is an insolvent under administration, deceased, mentally incapable of managing his own affairs, is a trustee of his insolvent estate or an executor or administrator in respect of such member or is otherwise a person who is his duly appointed or authorized legal representative.

(3) The membership of any person qualified therefor in terms of sub-section (2) shall begin on the date of the registration of a founding statement or return of changed particulars containing The particulars required by section [] and section [] respectively.

(4) Where any person is to become a member of a corporation after registration of the founding statement the existing members shall ensure that the requirements of section [] regarding the lodging of a return of changed particulars are complied with.

(5) A trustee in bankruptcy, executor, administrator or other legal representative referred to in sub-paragraph (2)(c), who is not obliged or who does not intend to transfer the interest of the member in accordance with this Act within 28 days of

his assuming office to any other person, shall within that period, or any extended period allowed by the Commission on application by him, request the existing members of the corporation to lodge with the Commission in accordance with section [] a return of changed particulars designating him, by virtue of his office, as representative of the member in question.

(6) Where the corporation has no other member, any such representative himself shall, in the circumstances contemplated in sub-

section (5), act on behalf of the corporation in accordance with section [], read with sub-section (5).

(7) Sub-sections (5) and (6) shall not affect the power of any such representative, as from the date of his assuming office, and whether or not a return of changed particulars has been lodged, to represent the member concerned in all matters in which he himself as a member could have acted, until the interest of that member has in accordance with this Act been transferred to any other qualified person.

(8) A corporation is not concerned with the execution of any trust in respect of any member's interest in the corporation.

20 (1) A minor who is a member of a corporation shall be represented in the corporation by his guardian.

(2) A member subject to any other legal disability shall be represented by his duly appointed or authorized legal representative referred to in sub-section 19(5).

21 (1) None of the following persons shall become a member of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation without the leave of the Court:

(a) an insolvent under administration;

(b) a person who has, whether before or after the commencement of this Act, been convicted within or outside the Territory in any of the ways set out in sub-section 227(2) of the Companies Act 1981: provided that the period of disqualification of any such person shall be:

(i) 5 years after his conviction; or

(ii) if he was imprisoned under sentence, 5 years after his release from prison prima facie evidence of which release may be constituted by a certificate by a prescribed authority stating that the person concerned was released from prison on a specified date;

(c) a person who is subject to an order of a court made under section 227A or section 562 of the Companies Act 1931 or a provision of a law of a participating State or Territory that corresponds with section 227A or section 5(52); or

(d) a person who is subject to a notice served on him under section 562A of the Companies Act 1981 or a provision of a law

of a participating State or Territory that corresponds with section 562A.

Penalty: \$5,000 or imprisonment for one year, or both.

(2) When granting leave under this section the court may impose such conditions or limitations as it thinks fit and a person who contravenes or fails to comply with any such condition or limitation that is applicable to him is guilty of an offence.

Penalty: \$5,000 or imprisonment for one year, or both.

(3) A person intending to apply for leave of the court under this section shall give the Commission not less than 21 days notice of his intention so to apply.

(4) The court may at any time, on the application of the Commission, revoke leave granted by the court under this section.

(5) Where a corporation has only one member and that member becomes a person referred to in sub-paragraph (1) (b), (1) (c) or (1) (d) the Court may order that the corporation be wound up.

22 (1) The interest of any member in a corporation shall be a single interest expressed as a percentage.

(2) Two or more persons shall not be Joint holders of the same member's interest unless they are Joint trustees in bankruptcy, joint executors or joint administrators or other Joint legal representatives In respect of a member in which they shall be counted as one member.

(3) The existing members shall issue to each member a certificate in prescribed form signed by every member of the corporation, and stating the current percentage of such member's interest in the corporation.

23 A person becoming a member of a corporation shall acquire his member's interest required for membership:

(a) from one or more of the existing members or his or their trustee in bankruptcy or legal representative; or

(b) pursuant to a contribution (whether of cash or other property) made by such person to the corporation, in which case the percentage of his member's interest is determined by agreement between him and the existing members, and the percentages of the interests of the existing members in the corporation shall be reduced in accordance with section [] .

24 (1) Notwithstanding any provision to the contrary in any agreement between members, a trustee in bankruptcy in respect of a member may, in the discharge of his duties, sell that member's interest:

(a) to the corporation if there are one or more members other than the bankrupt member;

(b) to the members of the corporation other than the bankrupt member, in proportion to their members' interests or as they may otherwise agree upon; or

(c) subject to sub-section(2), to any other person who is qualified to become a member in terms of section [].

(2) If the corporation has one or more members other than the bankrupt member, the following provisions shall apply to a sale in terms of paragraph (1)(c) of the bankrupt member's interest:

(a) the trustee in bankruptcy shall deliver to the corporation a written statement giving particulars of the name and address of the proposed purchaser, the purchase price and the time and manner of payment thereof;

(b) for a period of 28 days after the receipt by the corporation of the written statement the corporation or the members [or both], in such proportions as they may agree upon, shall have the right, exercisable by written notice to the trustee in bankruptcy, to be substituted as purchaser of the whole, and not a part only, of the bankrupt member's interest at the price and on the terms set out in the written statement of the trustee in bankruptcy; and

(c) if the bankrupt member's interest is not purchased in terms of paragraph (b), the sale referred to in the written statement of the trustee in bankruptcy shall become effective and be implemented.

25 Subject to any other arrangement in an agreement between all the members, an executor of the will of a deceased member or an administrator of the estate of a deceased member shall, in the performance of his duties:

(a) cause the deceased member's interest to be transferred to a person who qualifies for membership of a corporation in terms of sections [] and is entitled thereto as legatee or as distributee on intestacy, if the remaining members (if any) consent to the transfer of the member's interest to that person; or

(b) if any consent referred to in paragraph (.a) is not given within 28 days after it was requested by the executor or administrator, sell the deceased member's interest:

(i) to the corporation, if there is ally other member or members than the deceased member;

(ii) to any other remaining member or members of the corporation in proportion to the interests of those members or as they may otherwise agree; or

(iii) to any other person who qualifies for membership in terms of sections [] in which case sub-section 24(2) shall apply in respect of such sale as if the interest to be sold were an interest of a bankrupt member and as if the executor or administrator were a trustee in

bankruptcy.

26 (1) On application by any member of a corporation the Court may on any of the following grounds order that any member shall cease to be a member of the corporation:

(a) subject to the provisions of any agreement between all the members (if any), that the member is permanently incapable, because of unsound mind or any other reason, of performing his part in the carrying on of the business of the corporation;

(b) that the member has been guilty of such conduct as in the opinion of the Court, regard being had to the nature of the corporation's business, is likely to affect prejudicially the carrying on of the business;

(c) that the member so conducts himself in matters relating to the corporation's affairs that it is not reasonably practicable for the other member or members to carry on the business of the corporation with him; or

(d) that circumstances have arisen which make it just and equitable that that member should cease to be a member of the corporation:

Provided that such application to the Court on a ground in paragraph (a) or (d) may also be made by a member in respect of whom the order shall apply.

(2) When making an order in terms of sub-section (1) the Court may make such further orders as it thinks fit in regard to:

(a) the acquisition of the member's interest concerned by the corporation or by members other than the member concerned;

(b) the amounts (if any) to be paid in respect of the member's interest concerned or the claims against the corporation of that member, the manner and times of such payments and the persons to whom they should be made; or

(c) any other matter regarding the cessation of membership that the Court thinks fit.

(3) When the Court makes an order in terms of sub-section (1) the remaining member or members shall lodge a return of changed particulars under section [] within 14 days of the order being made: Provided that the member in respect of whom the order is made may lodge that return.

27 Every transfer by a member of his interest, in whole or in part, in the corporation, other than a disposition provided for in section [] or section [], whether to the corporation, any other member or any

other person qualifying for membership in terms of sections [] and [], shall be done:

(a) in accordance with an agreement (if any) made between all the members; or

(b) with the consent of every other member of the corporation;

Provided that no member's interest shall be acquired by the corporation unless it has one or more members.

28 The aggregate of the members' interests in a corporation expressed as a percentage shall at all times be one hundred per cent, and for that purpose:

(a) any transfer of the interest, in whole or in part, shall be effected by the cancellation or the reduction, as the case may require, of the interest of the member concerned and the allocation in the name of the transferee, if not already a member, of a member's interest of the percentage concerned, or the addition to the interest of an existing member of the percentage concerned;

(b) when a person becomes a member of a corporation pursuant to a contribution made by him to the corporation, the percentage his member's interest shall be agreed upon by him and the existing members, and the percentages of the interests of the existing members shall be reduced proportionally or as they may otherwise agree; and

(c) any member's interest acquired by the corporation shall be added to the respective interests of the other members in proportion to their existing interests or as they may otherwise agree.

29 (1) Payment (including the delivery or transfer of any property) by a corporation in respect of its acquisition of a member's interest in the corporation shall be made only:

(a) if every member of the corporation first makes a declaration that they have made an inquiry into the affairs of the corporation and that they have each formed the opinion in relation to the specific payment that:

(i) after such payment is made, the corporation's assets, fairly valued, will exceed all its liabilities, including contingent liabilities;

(ii) during the next ensuing 12 months the corporation will be able to pay its debts as they fall due in the ordinary course of its business; and

(iii) such payment will in the particular circumstances not make the corporation unable during the next ensuing

12 months to pay its debts as they fall due in the ordinary course of its business.

(2) A corporation may give financial assistance (whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise) for the purpose of, or in connection with, any acquisition of a member's interest in that corporation by any person, only:

(a) with the previously obtained written consent of every member of the corporation for the specific assistance;

(b) if, after such assistance is given, the corporation's assets, fairly valued, exceed all its liabilities, including contingent liabilities;

(c) if during the next ensuing 12 months the corporation will be able to pay its debts as they fall due in the ordinary course of its business; and

(d) if such assistance will in the particular circumstances not make the corporation unable to pay its debts as they fall due in the ordinary course of its business.

(3) A person who makes a declaration under this section without having reasonable grounds for his opinion on any of the matters referred to in sub-sections (1) or (2), as the case may be, is guilty of an offence.

Penalty: []

(4) If at any time within the 12 months next ensuing after the corporation makes a payment referred to in sub-section (1) or gives financial assistance referred to in sub-section (2) the corporation is unable to pay its debts as they fall due in the ordinary course of its business:

(a) it shall be presumed, unless the contrary is shown, that a member who made the declaration referred to in sub-section (1) or sub-section (2), as the case may be, did not have reasonable grounds for his opinion; and

(b) if within the period of 12 months the corporation commences to be wound up,

(1) [the persons who consented to the payment referred to in sub-section (1) and] the person to whom the payment referred to in sub-section (1) was made shall be [jointly and

severally] liable to pay to the corporation an amount equal to that paid by the corporation; or

(ii) the persons who consented to the giving of financial assistance referred to in sub-section (2) shall be jointly and severally liable to pay to the corporation an amount equal to the amount of the financial assistance

given and not otherwise recouped by the corporation.

30 No person shall:

(a) issue any share or interest in a corporation on terms that the share or interest is partly-paid;

(b) offer to any member of the public any share, debenture or other interest in a corporation or invite any member of the public to acquire or to offer to acquire any such share, debenture or other interest; or

(c) issue any share warrant in a corporation.

PART V - INTERNAL RELATIONS BETWEEN MEMBERS

31 (1) Each member of a corporation shall stand in a fiduciary relationship to the corporation.

(2) Without prejudice to the generality of the expression "fiduciary relationship", the provisions of sub-section (1) imply that a member:

(a) shall in relation to the corporation act honestly and in good faith, and in particular:

(i) shall exercise such powers as he may have to manage or represent the corporation in the interest and for the benefit of the corporation; and

(it) shall not act without or exceed the powers aforesaid;

(b) shall avoid any material conflict between his own interests and those of the corporation, and in particular:

(i) shall not derive any personal economic benefit to which he is not entitled by reason of his membership of or service to the corporation, from the corporation or from any other person in circumstances where that benefit is obtained in conflict with the interests of the corporation;

(ii) shall notify every other member, at the earliest practicable opportunity in the circumstances, of the nature and extent of any direct or indirect material interest that he may have in ally transaction of the corporation; and

(iii) shall not compete in any way with the corporation in its business activities.

(3) A member of a corporation whose act or omission has breached any duty arising from his fiduciary relationship shall be liable to the corporation for:

(a) any loss suffered as a result thereof by the corporation;
or

(b) any economic benefit derived by the member by reason
thereof.

(4) Where a member fails to comply with sub-paragraph
(2) (b) (it) and it becomes known to the corporation that the
member has an interest referred to in that sub-paragraph in
any transaction of the corporation, the transaction may, at
the option of the corporation, be avoided within a reasonable
time but not so as to prejudice the rights of any third person
who has acquired rights arising out of or in pursuance of the
transaction in good faith.

(5) Except as regards his duty referred to in sub-paragraph
(2) (a) (i), any particular conduct of a member shall not
constitute a breach of a duty arising from his fiduciary
relationship to the corporation, if such conduct was preceded
or followed by the written approval of all the members where
they were or are aware of all the material facts.

32 (1) A member of a corporation shall be liable to the
corporation for loss caused by his failure in the carrying on
of the business of the corporation to act with the degree of
care, diligence and skill that may reasonably expected from a
person of his knowledge and experience.

(2) No liability under sub-section (1) shall be incurred if
the particular conduct was preceded or followed by the written
approval of all the members where they were aware of all the
material facts.

33 (1) Where a member or former member of a corporation is
liable to the corporation on account of:

(a) the breach of a duty arising from his fiduciary
relationship to the corporation in terms of section 31, or

(b) negligence in terms of section 32,

any other member may bring proceedings in respect of any such
liability on behalf of the corporation against such member or
former member after notifying all other members of the
corporation of his intention to do so.

(2) After the commencement of such proceedings by a member the
leave of the court concerned shall be required for a
withdrawal of the proceedings or for any settlement of the

claim, and the court may in connection with such withdrawal or settlement make such orders as it thinks fit.

(3) If a court in any case finds that the proceedings, if unsuccessful, were begun without prima facie grounds, it may order the member who began the proceedings on behalf of the corporation himself to pay the costs of the corporation and of the defendant in question in such manner as the court may determine.

34 (1) The members of a corporation having 2 or more members may at any time enter into a written agreement to be called an association agreement and which shall be signed by each member.

(2) The association agreement may regulate:

(a) any matter which in terms of this Act may appear in an association agreement; and

(b) any other matter relating to the internal relationship between the members, or the members and the corporation, in a manner consistent with this Act.

(3) A new member of a corporation shall be bound by an existing association agreement between the other members as if he had signed it as a party thereto.

(4) Subject to this Act, an association agreement shall bind the corporation to every member in his capacity as a member of that corporation and, in such capacity, every member to the corporation and to every other member.

(5) Any amendment to, or the dissolution of, an association agreement shall be in writing and signed by or on behalf of each member, including a new member referred to in sub-section (3).

(6) A corporation shall keep any association agreement at the corporation's principal place of business where any member may inspect it and may make extracts therefrom and copies thereof.

(7) No person other than a member or former member or a person authorized by the Commission shall be entitled to inspect any association agreement.

35 The following rules in respect of internal relations in a corporation shall apply in so far as this Act or an association agreement in respect of the corporation does not provide otherwise:

(a) every member is entitled to participate in the carrying on of the corporation's business;

(b) members, other than members under a legal disability, shall have equal rights in regard to the management of the business of the corporation and in regard to the power to represent the corporation in the carrying on of its business:

Provided that the consent in writing of 75 per cent of the members shall be required for:

(i) a change in the principal business carried on by the corporation;

(ii) a disposal of the whole, or substantially the whole, undertaking of the corporation; and

(iii) a disposal of all, or the greater portion of, the assets of the corporation;

(c) any differences between members as to matters connected with a corporation's business shall be decided by a majority of members;

(d) at any meeting of members of the corporation each member shall have the number of votes that corresponds with the percentage of his interest in the corporation;

(e) a corporation shall indemnify every member in respect of payments made and liabilities incurred by him:

(i) in the ordinary and proper conduct of the business of the corporation; and

(ii) in regard to anything necessarily done or to be done for the preservation of the business or property of the corporation; and

(f) payments by a corporation to its members by reason only of their membership in terms of section [] shall be of such amounts and be made at such times as the members may from time to time agree upon, and such payments shall be made to members in proportion to their respective interests in the corporation.

36(1) Subject to this Act, any payment by a corporation to a member solely by reason his membership may be made only:

(a) if the assets of the corporation, fairly valued, exceed its liabilities;.

(b) if the corporation is able to pay its debts as they fall due in the ordinary course of its business; and

(c) if such payment will in the particular circumstances not make the corporation unable to pay its debts as they fall due in the ordinary course of its business.

(2) A person shall be liable to a corporation for any payment received contrary to any provision of sub-section (1). (3) For the purposes of this section:

(a) without prejudice to the generality of the expression "payment by a corporation to any member by reason only of his membership", that expression excludes any payment to a member in his capacity as a creditor of the relevant corporation and,

in particular, a payment as remuneration for services rendered as an employee or officer of the corporation, a repayment of a loan or of interest thereon or a payment of rental; and

(b) "payment" includes the delivery or transfer of property.

The provisions of section 320 of the Companies Act 1981 relating to the conduct of affairs of a company in an oppressive or unjust manner shall apply to a corporation as if:

- (a) a reference to a company, wherever occurring, were a reference to a corporation;
- (b) a reference to the shares of any member, wherever occurring, were a reference to the interest of any member;
- (c) a reference to reduction of capital, wherever occurring, did not appear; and
- (d) sub-section 320(5) did not appear.

PART VI - EXTERNAL RELATIONS OF CLOSE CORPORATIONS

37 (1) A corporation has, both within and outside the Territory, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside the Territory, power:

- (a) to issue debentures of the corporation;
- (b) to distribute any of the property of the corporation among the members in kind or otherwise;
- (c) to grant a floating charge on property of the corporation; and
- (d) to do any other act that it is authorized to do by any other law.

(2) The fact that the doing of an act by a corporation:

- (a) is prohibited by law; or
- (b) would not be, or is not, in the best interests of the corporation

does not affect the legal capacity of the corporation to do the act.

38 (1) Subject to this section, and until the making of an order that the corporation be wound up or the passing of a resolution for its winding up, any member of a corporation shall in relation to a person who is not a member and who is [attempting to deal] [dealing] with the corporation be an

agent of the corporation for the purposes of the business of the corporation.

(2) Any act of a member shall bind a corporation if:

(a) the act is expressly or impliedly authorized by the corporation or is subsequently ratified by it;

(b) the act is performed for the carrying on, in the usual way, of business of the kind actually carried on by the corporation at the time of performance of the act, unless the member so-acting has no power to act for the corporation in the particular matter and the person with whom he deals has, or ought reasonably to have, knowledge of the fact that the member has no such power.

(3) Where an act of a member of a corporation is performed for a purpose apparently not connected with the ordinary course of the business actually being carried on by the corporation at the time of the performance of the act, the corporation shall not be bound by that act, unless:

(a) the corporation authorized the act;

(b) the corporation held out the member as having its authority and the person with whom the member dealt did not know and ought not reasonably to have known that the member lacked authority; or

(c) the corporation ratified the act.

(4) Where an association agreement restricts the power of a member to represent a corporation, or where any member is disqualified under section [] from participating in the management of the business of the corporation, no act in contravention of the restriction or performed by the disqualified person shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge of such restriction or disqualification.

(5) Where the consent in writing of all or part of the members of a corporation is in any particular case required, no act in contravention of that requirement shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge that the particular act is performed in contravention of such requirement.

39 (1) An admission or representation made by any member of a corporation concerning its affairs, and in the ordinary course of its business, is evidence against the corporation.

(2) Notice to any member who habitually acts in a corporation's business and who receives that notice in the course of that business of any matter relating to the affairs of the corporation operates as notice to the company [except in the case of a fraud on the corporation committed by or with the consent of that member].

40 A statement in a founding statement, a return of changed particulars or an annual return that a particular person is a member shall, for the purposes of sections [], be conclusive evidence that that person remains a member until the time when a return of changed particulars is lodged with Commission specifying that that person has ceased to be a member.

41 Where a contract purports to be made to bind a corporation and the corporation was not then registered, the provisions of section 81 of the Companies Act 1981 shall apply as if that section, when referring to a non-existent company were referring to a non-existent corporation and when referring to a company were referring to a corporation.

42 (1) No person shall so act as to make a corporation a trustee under a will, settlement or declaration of trust or to cause the corporation to act as such a trustee.

(2) A person who is in any way, directly or indirectly, knowingly concerned in or party to a contravention of this section is Jointly and severally liable with the corporation for the debts, liabilities and other obligations of the corporation which it incures by reason of its acting as such a trustee as if that person had been a co-trustee with the corporation.

(3) A transaction is not invalid by reason of a contravention of this section.

42A. [Corporation not to become a holding company.]

PART VII - ACCOUNTS

43 (1) The members of a corporation shall:

(a) keep such accounting records as correctly record and explain the transactions of the corporation and the financial position of the corporation; and

(b) keep its accounting records ill such a manner as will enable:

(i) the preparation from time to time of true and fair accounts of the corporation; and

(ii) in particular, ascertainment at any time without unreasonable delay of whether the assets of the corporation, fairly valued, exceed its liabilities and whether the corporation is able to pay its debts as they fall due in the ordinary course of its business.

(2) The corporation shall retain the accounting records kept under this section for a period of 7 years after the completion of the transactions to which they relate.

(3) The accounting records shall be kept:

(a) in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language;

(b) at the corporation's principal place of business in the Territory or at such other place in the Territory as is notified to the Commission from time to time by notice in the

form set out in Schedule [] to this Act.

PART VIII - REGISTRATION OF CHARGES

44 The provisions of Part IV Division 9 of the Companies Act 1981 relating to registration of charges shall apply to a corporation as if -

- (a) it were a company incorporated under that Act;
- (b) a reference to an officer, wherever occurring, were a reference to a member; and
- (c) sections 209, 213, 214 and 215A did not appear.

PART IX - LEGAL PROCEEDINGS

45 (1) A document may be served on a corporation by:

(a) delivering a copy of the document personally to a member of the corporation who resides in Australia or an external Territory; or

(b) by serving it at the principal place of business of the corporation in the Territory, on some person having at the time of service the apparent control or management of the corporation's business there.

(2) Service under paragraph (1)(b) shall be deemed good service on the corporation, whether any of the members thereof are out of the jurisdiction or not.

(3) Where a liquidator or provisional liquidator of a corporation has been appointed, a document may be served on the corporation by leaving it at, or by sending it by post to, the last address of the liquidator or provisional liquidator, notice of which has been lodged with the Commission.

(4) Where an official manager of a corporation has been appointed, a document may be served on the corporation 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 with the Commission.

(5) Nothing in this section affects:

(a) the power of the court to authorize a document to be served on a corporation in a manner not provided for by this section; or

(b) the operation of any provision of a law in force in the Territory or of the rules authorizing a document to be served on a corporation in a manner not provided for by this section.

46 (1) Where a corporation is plaintiff in any legal proceedings, the court having Jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

(2) The costs of any proceedings before a court under this Act shall be borne by such party to the proceedings as the court, in its discretion, directs.

(3) No civil proceedings under this Act shall be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

PART X - WINDING UP

47 (1) The following provisions of the Companies Act 1981 relating to the winding up of a company, namely, sections 358, 359, sub-section 364(2), sections 365, 366, 368, 369, 370, 371, 372, 373, 374, 375, 376, 379; 381, 382, 383, 385, 386, 387, 388, 389, 390, 391, 393, 394, 401, 403, 404, 405, 406, 407, sub-section 408(4), sections 410, 411, 413, 414, 415, 416, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 441, 442, 443, 444, 445, 446, 447, 448, 449, 451, 452, 454, 455~456, 457 and [regulations] shall apply to the winding up of a corporation in respect of any matter not specifically provided for in this Act [or regulations made hereunder].

(2) For the purposes of sub-section (1) any reference in a relevant provision of the Companies Act 1981 made applicable by sub-section (1):

(a) to a company, shall be construed as a reference to a corporation;

(b) to a contributory, shall be construed as a reference to a member;

(c) to an officer, shall be construed as a reference to a member;

(d) to votes conferred on each contributory by the Companies Act 1981 or articles, shall be construed as a reference to the relative degrees of entitlement to participation in the management of the corporation conferred on members by this Act or any agreement amongst members;

(e) to a member of the committee, shall be construed as a reference to a committee-member;

(f) to a director, shall be construed as a reference to a member;

(g) to the directors and secretary, shall be construed as a reference to members;

(h) to a meeting of the company, shall be construed as a reference to a meeting of members;

(J) to a transfer of shares, shall be construed as a reference to a transfer of an interest;

(k) to calls or liabilities to calls shall be omitted; and

(l) to an auditor shall be omitted.

(3) Section 367 of the Companies Act 1981 shall apply in the winding up of a corporation as if sub-sections 367(3), 367(4) and 367(5) did not appear.

(4) Section 376 of the Companies Act 1981 shall apply in the winding up of a corporation as if paragraph 376(a) were omitted and replaced by

"(a) as to the contributions of capital made by the members;"

(5) Section 383 of the Companies Act 1981 shall apply in the winding up of a corporation as if sub-section 383(3) were omitted and replaced by:

"(3) Where the Court has made an order terminating the winding up, the Court may give such directions as it thinks fit for the resumption of tile management and control of the corporation by its members."

(6) Section 384 of the Companies Act 1981 shall apply in the winding up of a corporation as if sub-sections 384(2) and 384(3) did not appear

(7) Section 397 of the Companies Act 1981 shall apply in the winding up of a corporation as the reference to section 395 of the Companies Act 1981 were a reference to section [] of this Act.

(8) Section 400 of the Companies Act 1981 shall apply in a creditors' voluntary winding up of a corporation as if:

(a) there were no reference to a director;

(b) sub-section 400 (4) read:

"On the appointment of a liquidator, the powers of the members to manage the company cease except so far as the committee of inspection or, if there is no such committee, the creditors approve the continuance of those powers."

(9) Section 411 of the Companies Act 1981 shall apply in the voluntary winding up of a corporation as if the following subsections were added to it:

"(4A) Where a corporation has only one member there will be a meeting of members if that member is present and at a meeting of the creditors and members of the corporation, 2 creditors and that member constitute a quorum.

(4B) Where a meeting of members of a corporation having only one member is convened and that member is not present, the liquidator shall, in lieu of lodging the return mentioned in sub-section (3), lodge a return (with account attached) that the meeting was duly convened and that no member was present and on such a return being lodged, the provisions of that sub-section as to the lodging of the return shall be deemed to have been complied with."

(10) Sub-section 441(5) of the Companies Act 1981 shall operate in relation to a corporation as if the reference to an officer were a reference to a member of the corporation or any person who, although not a member, has acted as if he were a member.

48 (1) A corporation (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the application of:

- (a) the corporation;
- (b) a creditor, including a contingent or prospective creditor, of the corporation;
- (c) a member of the corporation;
- (d) a liquidator of the corporation;
- (e) all official manager of the corporation; or
- (f) the Commission pursuant to section 312 or section 352 of the Companies Act 1981 as applied to a corporation by this Act.

(2) Notwithstanding anything in sub-section (1), the Court shall not hear the application if it is made by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a probable case for winding up has been established to the satisfaction of the Court.

49(1) The Court may order the winding up of a corporation if:

- (a) the corporation is unable to pay its debts;

(b) the corporation has resolved by a majority of its members that it be wound up under an order of the Court;

(c) the corporation has no members or no members who remain qualified to be members;

(d) the number of members is increased above the permissible

maximum of 10;

(e) in a corporation with only one member that member does not reside in Australia or an external Territory;

(f) in a corporation with only 2 members any member does not reside In Australia or an external Territory;

(g) in any corporation other than one referred to in paragraph (e) or (f), a majority of members do not reside in Australia or an external Territory;

(h) a body corporate has become a member of the corporation without being authorized to do so by this Act;

(j) the corporation becomes a trustee under a will, settlement or declaration of trust;

(k) affairs of the corporation 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;

(l) an act or omission, or a proposed act or omission, by or on behalf of the corporation, 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;

(m) the Commission has reported under Part VII of the Companies Act 1981 as applied by this Act that it is of the opinion, or an inspector appointed under Part VII has reported that he is of opinion:

(i) that the corporation cannot pay its debts and should be wound up;

(ii) that it is in the interests of the public, of the members or of the creditors that the corporation should be wound up;

(n) the business of the corporation can only be carried on at a loss;

(o) there occurs an event the happening of which, the members have previously agreed, shall be a ground for winding up the corporation; or

(p) the Court is of opinion that it is just and equitable that the corporation be wound up.

(2) Where an application is made by a member under paragraph (k), sub-paragraph (1) or paragraph (p), the Court, if it is of the opinion that

(a) the applicant is entitled to relief by winding up the corporation or by some other means; and

(b) in the absence of any other remedy it would be just and equitable that the corporation should be wound up,

shall make a winding up order unless it is also of the opinion that some other remedy is available to the applicant and that he is acting unreasonably in seeking to have the corporation wound up instead of pursuing that other remedy.

(3) Notwithstanding any rule of law to the contrary, the Court shall not refuse to make an order for winding up on the application of a member on the ground that, if the order were made, no property of the corporation would be available for distribution among members.

50 (1) A winding up of a corporation otherwise than under an order of the Court shall be either a members' voluntary winding up or a creditors' voluntary winding up.

51 (1) Subject to section 391 of the Companies Act 1981 as applied to the winding up of a corporation, a corporation may be wound up voluntarily if such majority of members as may be specified in an association agreement so resolves in writing and if there is no association agreement or no majority of members is specified, it may be wound up if a majority of members so resolve in writing and serve a copy of that resolution on all other members.

(2) Where a corporation has only one member then, subject to section 391, the corporation may be wound up if that member resolves in writing that it should be wound up.

(3) A corporation shall:

(a) within 7 days after the making of a resolution for voluntary winding up, lodge a printed copy of the resolution and a list of the members who made the resolution with the Commission; and

(b) within 21 days after the making of the resolution, advertise the resolution in the Gazette.

(4) If the corporation fails to comply with sub-section (3), the corporation and every member of it who is in default is each guilty of an offence.

52 (1) No resolution for a members' voluntary winding up of a corporation shall be valid unless prior to the making of the resolution the members or member who made the resolution made a written declaration naming themselves and declaring to the effect that they made an inquiry into the affairs of the corporation and formed the opinion that the corporation would be able to pay its debts in full within a period not exceeding 12 months next after the commencement of winding up.

(2) There shall be attached to the declaration a statement of affairs of the close corporation showing in the form set out in Schedule [] to this Act:

(a) the property of the corporation and the total amount expected to be realized from that property;

(b) the liabilities of the corporation; and

(c) the estimated expenses of winding up

made up to the latest practicable date before the making of the declaration.

(3) A declaration made has no effect for the purposes of this Act unless:

(a) the declaration is lodged with the Commission at least 21 days before the date on which the member Dr members propose to make the resolution or such later date as the Commission, whether before or after that date, allows; and

(b) the resolution for voluntary winding up is made within 35 days after the making of the declaration or within such further period after the making of the declaration as the Commission, whether before or after the expiration of 'that period of 35 days, allows.

(4) A person who makes a declaration under this section (including a declaration that has no effect for the purposes of this Act by reason of sub-section (3)) without having reasonable grounds for his opinion that the corporation will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.

Penalty: \$5,000 or imprisonment for one year, or both.

(5) If the corporation is wound up pursuant to a resolution for voluntary winding up made within 35 days after the making of the declaration or such further period as the Commission may allow, but its debts are not paid or provided for in full within the period Stated in the declaration, it shall be presumed, unless the contrary is shown that a person who made the declaration did not have reasonable grounds for his opinion.

(6) Where a declaration is not made the voluntary winding up shall be instituted as a creditors' voluntary winding up.

53(1) When a members' voluntary winding up has been resolved upon the members of the corporation shall appoint a liquidator or liquidators for the purpose of winding up the affairs of and distributing the property of the close corporation and may fix his or their remuneration.

(2) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, the members may fill the vacancy by the appointment of a liquidator and fix his remuneration and for that purpose a meeting of members may be convened by a member, or if there were 2 or more liquidators, by the continuing liquidator or liquidators.

54(1) Where a voluntary winding up of a corporation is to be instituted as a creditors' voluntary winding up the corporation shall cause a meeting of the creditors of the corporation to be convened for the day, or the day next following the day, on which there is proposed to be made a resolution for voluntary winding up, and shall cause notices of the meeting of creditors to be sent by post to the creditors.

(2) Sub-sections 398(2), 398(3), 398(4), 398(5), 398(6), 398(6A), 398(7), 398(8), and 398(9) of the Companies Act 1981 shall apply in the winding up of a corporation as if:

(a) a reference to a company were a reference to a corporation;

(b) a reference to a director were a reference to a member; and (c) a reference to a secretary did not appear.

(3) Section 399 of the Companies Act 1981 shall apply in the winding up of a corporation as if the reference to section 398 of the Companies Act were a reference to sub-section [] of this Act.

55 (1) The liquidator may:

(a) in the case of a members' voluntary winding up, with the approval of the members or the Court or, in the case of a creditors' voluntary winding up, with the approval of the Court or committee of inspection or, if there is no such committee, a meeting of creditors, exercise any of the powers given by sub-paragraphs 377(1) (b), 377(1) (c) and 377(1) (d) of the Companies Act 1981 (as applied in the winding up of a corporation) to a liquidator in a winding up by the Court;

(b) exercise any of the other powers by this Act given to a liquidator in a winding up by the Court;

(c) exercise the power of the Court of fixing a time within which debts and claims must be proved; or

(d) convene a meeting of members for the purpose of obtaining the sanction of the members in respect of any matter or for any other purpose as he thinks fit.

(2) The liquidator shall pay the debts of the corporation and adjust the rights of the members among themselves.

56 A person shall not seek to be appointed, or act, as liquidator of a corporation:

(a) where the corporation is being wound up by the Court if he is not an official liquidator;

(b) if he is an insolvent under administration;

(c) without the leave of the Court:

(i) if he, or a corporation in which he has a relevant interest not less than 10 per cent, is indebted to the corporation being, wound up in an amount exceeding \$5,000; or

(ii) if he, otherwise than in his capacity as liquidator, or a corporation in which he has a relevant interest not less than 10 per cent is a creditor of the corporation being wound up in an amount exceeding \$5,000; or

(d) if he has not consented in writing to act as liquidator of the corporation.

Penalty: \$1,000 or imprisonment for 3 months, or both.

57 Except as otherwise provided by this Act, all debts proved in a winding up rank equally and, if the property of the corporation is insufficient to meet them in full, they shall be paid proportionately.

58 (1) Subject to section 441 of the Companies Act 1981 as applied by this Act, in the winding up of a corporation:

(a) payment in respect of the following debts shall be deferred until all unsecured creditors other than members have been paid in full:

(i) debts owing to a member, a spouse of a member or a relative of a member or of a member's spouse;

(ii) debts owing to a trustee of a trust under which a person referred to in sub-clause (i) has a beneficial interest;

(iii) debts owing to a corporation, where a person referred to in sub-clause (i) or a person referred to in sub-clause (ii), or 2 or more such persons together have, a relevant interest or relevant interests of not less than 10 per cent; and

(iv) debts owing to a trustee under which a corporation referred to in sub-clause (iii) has a beneficial interest.

(b) a sum due to a member in his capacity as a member by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in a case of competition between himself and any other creditor who is not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

(2) In this section "member" includes any person who was a member of the company at any time within 12 months immediately before the commencement of the winding up.

59 (1) If a corporation which has been wound up or is in the course of being wound up, was or is unable to pay all its debts in full, the Court, on the application of the liquidator or the Commission, may declare that a person who was a member of the corporation, shall be personally liable without any limitation of liability for the payment to the corporation of so much of the amount required to satisfy the debts of the corporation as the Court shall specify but not exceeding an amount equal to the total of the debts incurred by the close corporation during the period when that person was a member.

(2) If 2 or more persons who were members of the corporation are declared personally liable under sub-section (1), the Court may declare that they are jointly and severally liable.

(3) The Court may make a declaration under sub-section (1) if it is satisfied that during the period when the person in respect of whom the declaration is sought was a member of the corporation:

(a) the corporation incurred a debt, whether within or outside

the Territory, and immediately before the time when the debt was incurred:

(i) there were reasonable grounds to expect that the corporation would not be able to pay all its debts as they fell due in the ordinary course of its business; or

(ii) there were reasonable grounds to expect that, if the corporation incurred the debt, it would not be able to pay all its debts as they fell due in the ordinary course of its business;

(b) there were reasonable grounds to expect that the corporation would not be able to pay all its debts as they fell due and the person in respect of whom the declaration is sought; during the period when he was a member, made no reasonable efforts to cause:

(i) the cessation of the corporation's business;

(ii) a meeting of the corporation's creditors to be convened;
or

(iii) the capital available to the corporation to be increased by contributions of the members;

(c) an asset of the corporation was disposed of otherwise than:

(i) for a purpose reasonably incidental to the proper conduct of the kind of business carried on by the corporation;

(ii) as a distribution to members authorized by this Act; or

(iii) as required by law.

(d) the number of members exceeded the maximum of 10;

(e) the requirements of section [] relating to the residence of members were being contravened;

(f) the time prescribed for lodging a return of changed particulars or an annual return in respect of the corporation expired and the return was not received by the Commission before that expiration;

(g) the corporation's accounting records were not being kept as required by law;

(h) a person disqualified by section [] from being a member was a member and the person in respect of whom a declaration is sought was aware of facts by reason of which there was a disqualification;

(j) a business document issued by the corporation did not comply with section []; or

(k) the time prescribed for payment of lodgment fees by the corporation expired and lodgment fees were not received by the Commission before that expiration.

(4) The Court shall not make a declaration on the grounds set out in sub-paragraph (3) (a) if the person in respect of whom the declaration is sought proves:

(a) that the debt was incurred without his express or implied authority; or

(b) that at the time when the debt was incurred, he did not have reasonable cause to expect:

(i) that the corporation would not be able to pay all its debts as they fell due in the ordinary course of its business; or

(ii) that, if the corporation incurred that debt, it would not be able to pay all its debts as they fell due in the ordinary course of its business.

(5) The Court shall not make a declaration on the grounds set out in sub-paragraph (3) (b) if the person in respect of whom the declaration is sought proves that at all material times he did not have reasonable cause to expect that the corporation would not be able to pay all its debts as they fell due in the ordinary course of its business.

(6) The Court shall not make a declaration on the grounds set out in sub-paragraph (3) (c) :

(a) if the person in respect of whom the declaration is sought proves that the asset was disposed of without his express or implied authority; and

(b) where it is shown that the person in respect of whom the declaration is sought, at any time after the disposition, whether within or outside the period when he was a member, had reason to suspect:

(i) that the asset had been disposed of; and

(ii) that it was disposed of otherwise than in the ways set out in sub-paragraph (3) (c),

he proves that he made reasonable efforts to enable the corporation to recover the asset or to obtain compensation loss caused by any breach of duty constituted by the disposition.

(7) Proceedings may brought under sub-section (1) whether or not the person in respect of whom the declaration is sought, or any other person, has been convicted of an offence in relation to his being a member of the corporation.

(8) On any issue of fact referred to in this section, the civil standard of proof shall apply.

(9) If a person has been made liable under section [] for the payment of a debt of the corporation and he has paid any part of the debt, the maximum amount for which he may be made liable under sub-section (1) shall be reduced by the amount so paid.

(10) Where, under sub-section (1), a person is declared personally liable for the payment of an amount to the corporation the rights of that person to indemnity, subrogation or contribution in relation to any person other than the corporation are not affected by that declaration.

(11) Where the Court makes a declaration under sub-section (1) in relation to a person, it may give such further directions as it thinks fit for the purpose of giving effect to the declaration.

(12) In particular, the Court may order that the liability of the person under the declaration shall be a charge:

(a) on a debt or obligation due from the corporation to him or an assignee from him; or

(b) on a right or interest under a charge on any property of the corporation held by or vested in him or a person on his behalf, or a person claiming as assignee from or through the person liable or a person acting on his behalf.

(13) The Court may, from time to time, make such further order as it thinks fit for the purpose of enforcing a charge imposed under sub-section (12).

(14) For the purpose of sub-section (12), "assignee" includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration other than marriage, given in good faith and without actual knowledge, or in circumstances ill which he ought reasonably to have had knowledge, of any of the matters oil which the declaration was made.

60 (1) Any member of a corporation may lodge with the Commission a declaration that the corporation will not be able to pay its debts in full within 12 months from the date of the lodgment of the declaration.

(2) A declaration shall not be, lodged under sub-section (1) unless a meeting of the members to consider a resolution that the corporation be wound up voluntarily and a meeting of the creditors of the company to

sanction such a resolution have been convened for a date within 28 days after the date of lodgment of the declaration.

(3) Forthwith after the lodging of the declaration under sub-section (1) the members shall appoint an official liquidator to be the provisional liquidator of the corporation.

(4) Subject to the [regulations], a provisional liquidator so appointed under sub-section (3) has the same powers as a liquidator of a company under the Companies Act 1981 in a winding up proceeding as a creditors' winding up as if the corporation were a company.

(5) The appointment of a provisional liquidator under sub-section (3) continues for a period of 28 days after his appointment or for such longer period as the Commission allows but, in any case, ceases on the appointment of a liquidator.

(6) Nothing in sub-section (5) prevents a provisional liquidator of a corporation being appointed liquidator of the corporation.

PART XI - MISCELLANEOUS

61 Insofar as the provisions of Part VII of the Companies Act 1981 relating to special investigations apply to a corporation, they shall apply as if a reference to an officer, wherever occurring, were a reference to a member.

62 The provisions of Part VIII of the Companies Act 1981 relating to arrangements and reconstructions, other than section 318, shall apply to a corporation as if it were a company incorporated under that Act.

63 The provisions of Part X of the Companies Act 1981 relating to receivers and managers shall, insofar as they do not apply of their own force 'to a corporation, apply in relation to a corporation as if it were a company incorporated under that Act.

64 The provisions of Part XI of the Companies Act 1981 relating to official management of companies shall apply in relation to a corporation as if:

(a) it were a company within the meaning of the Companies Act 1981;

(b) a reference to directors, wherever occurring, were a reference to members;

(c) a reference to a requirement of the Companies Act 1981, wherever occurring, were a reference to the requirements of this Act; and

(d) the reference in sub-section 351(4) to a report made under section 418 were a reference to a report under that section as applied by virtue of both this sub-section and sub-section 351.

65 Where a provision of this Act requires particulars of an address to be given the particulars shall specify the full address including, where applicable:

(a) the floor or level of a building which has more than one floor or level;

(b) the number or other distinguishing mark of a flat, apartment or other unit as well as the number or other distinguishing mark of the building containing the unit; and

shall specify, where applicable:

(c) any telephone number at the particular address which is not a silent line; and

(d) any relevant telex number.

66 The provisions of section 531 (relating to vesting orders) and section 532 (relating to parts of a dollar) of the Companies Act 1981 shall apply in relation to a corporation.

67 The provisions of section 535 of the Companies Act 1981 relating to the power of the Court to give relief in certain proceedings in its application in relation to a corporation shall effect as if there were added to the persons referred to in sub-section 535(4) a member of a corporation.

68 The provisions of section 538 of the Companies Act 1981 relating to certain appeals shall apply in relation to a corporation as if it were a company incorporated under that Act.

69 (1) The Court may, on the application of any interested person, make all or any of the following orders, with or without conditions:

(a) an order extending the period for doing any act, matter or thing under this Act or in relation to a corporation (including an order extending a period where the period concerned expired before the making of the application for the order) or abridging the period for doing such act, matter or thing;

(b) an order directing the rectification of any register kept by the Commission under this Act;

(c) an order declaring that any act, matter or thing purporting to have been done under this Act or in relation to

a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any agreement in relation to a corporation; or

(d) an order relieving a person in whole or in part from any civil liability in respect of any contravention or failure of a kind referred to in paragraph (c),

and may make such consequential or ancillary orders as the Court thinks fit.

(2) An order may be made under paragraph (1)(c) or (d) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(3) The Court shall not make an order under this section unless it is satisfied:

(a) in the case of an order referred to in paragraph (1) (c):

(i) that the act, matter or thing referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is in the public interest that the order be made; or

(b) in the case of an order referred to in paragraph (1)(d) - that the person subject to the civil liability acted honestly; and

(c) in every case - that no substantial injustice has been or is likely to be caused to any person.

70 A person aggrieved by the refusal of the Commission to register a corporation or to register or receive a document, or by any other act, omission or decision of the Commission in relation to any matter arising under this Act, may, within such period (if any) as is prescribed, appeal to the Court, which may confirm, reverse or modify the refusal, act or decision, or remedy the omission, as the case may be, and make such orders and give such directions in the matter as it thinks fit, but this section does not apply to any act or decision of the Commission that is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

71 Section 545 of the Companies Act 1981 relating to inspection of books shall apply in relation to a corporation as if references in it to the Companies Act were references to this Act.

72 Section 546 of the Companies Act 1981 relating to the location of records kept otherwise than in written form shall

apply to a corporation as if the reference in section 546 to the Companies Act 1981 were a reference to this Act.

73 A certificate of registration of a corporation shall on its mere production, in the absence of proof of fraud or error, be conclusive evidence that all the requirements of this Act in respect of registration and all matters precedent and incidental to registration have been complied with and that the corporation referred to in the certificate is duly incorporated under this Act.

74. (1) Any book kept by a corporation pursuant to a requirement of this Act is admissible in evidence in any proceeding and is prima facie evidence of any matter stated or recorded in the book.

(2) A document purporting to be a book kept by a corporation shall, unless the contrary is proved, be deemed to be such a book and to be kept pursuant to a requirement of this Act.

75 Where after a corporation outside the Territory has been dissolved, there remains in the Territory any outstanding property which was vested in the corporation, to which the corporation was entitled, or over which the corporation had a disposing power at the time when it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the corporation or its liquidators, the estate and interest in the property, at law or in equity, of the corporation or its liquidator at the time when the corporation was dissolved, together with all claims, rights and remedies that the corporation or its liquidators then had in respect of the [property, vests by force of this section in such person as is entitled to the property according to the law of the place of incorporation of the corporation.

76 The provisions of sections 553, 554, sub-sections 556(5), 556(6) and 556(7) of the Companies Act 1981 relating to offences by officers shall apply in relation to a corporation as if:

(a) a reference to a company, wherever occurring, were a reference to a corporation; and

(b) a reference to a past or present officer of a company, wherever occurring, were a reference to a past or present member of a corporation.

77 The provisions of section 559 of the Companies Act 1981 relating to the appointments or nomination of certain persons and of section 560 of the Companies Act 1981 relating to falsification of books shall each apply in relation to a corporation as if in each section a reference to a company, wherever occurring, were a reference to a corporation.

78 The provisions of section 561 of the Companies Act 1981 relating to frauds by officers of a company shall apply in relation to a corporation as if a reference to an officer of a company, wherever occurring, were a reference to a member of a corporation.

79 Section 563 of the Companies Act 1981 in its application in relation to a corporation shall apply as if the reference to any officer of the corporation, wherever occurring, were a reference to any member of the corporation.

80 Section 564 of the Companies Act 1981 in its application in relation to a corporation shall apply as if the reference to an officer of a corporation, wherever occurring, were a reference to a member of a corporation.

81 The provisions of sections 568, 569, 570 and 571 of the Companies Act 1981 relating to offences shall apply in relation to a corporation as if a reference in any of those sections to the Companies Act 1981, wherever 'occurring, were a reference to this Act.

82 The provisions of section 572 of the Companies Act 1981 relating to persons in default shall apply to a corporation and members of such a corporation as if:

(a) a reference in section 572 to the Companies. Act 1981 were a reference to this Act; and

(b) a reference in section 572 to an officer, wherever occurring, were a reference to a member of a corporation.

83 The provisions of sections 573, 574 and 575 of the Companies Act 1981 relating to certain powers of the Court shall apply in relation to a corporation as if a reference in those sections to the Companies Act 1981, wherever occurring, were a reference to this Act.

84 The provisions of section 577 of the Companies Act 1981 relating to the power to make regulations, shall apply in relation to a corporation as if a reference in section 577 to the Companies Act 1981, wherever occurring, were a reference to this Act.