

LAWS OF THE REPUBLIC OF VANUATU

**COMPANIES
[CAP. 191.]**

SCHEDULE 4

Matters to be Specified in Prospectus and Reports to be set out therein

PART I

MATTERS TO BE SPECIFIED

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
3. The names, descriptions and addresses of the directors or proposed directors.
4. Where shares are offered to the public for subscription, particulars as to -
 - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters -
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - (iv) working capital; and
 - (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
5. The time of the opening of the subscription lists.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.
7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say -
 - (a) the period during which it is exercisable;
 - (b) the price to be paid for shares or debentures subscribed for under it;
 - (c) the consideration (if any) given or to be given for it or for the right of it;
 - (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.
8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
9.
 - (1) As respects any property to which this paragraph applies –
 - (a) the names and addresses of the vendors;
 - (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
 - (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.
 - (2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property -
 - (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
 - (b) as respects which the amount of the purchase money is not material.
10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 9 applies, specifying the amount if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.
12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.
13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.
14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus.
15. The names and addresses of the auditors of the company.
16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.
17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares, respectively.
18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

REPORTS TO BE SET OUT

19. (1) A report by the auditors of the company with respect to -
 - (a) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and
 - (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have

been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

- (2) If the company has no subsidiaries, the report shall -
- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and
 - (a) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.
- (3) If the company has subsidiaries, the report shall -
- (a) so far as regards profits and losses, deal separately with the company's profits and losses as provided by subparagraph (2), and in addition, deal either –
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and
 - (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and, in addition, deal either -
 - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or
 - (ii) individually with the assets and liabilities of each subsidiary;and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon -

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
 - (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.
21. (1) If -
- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
 - (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;
- a report made by accountants (who shall be named in the prospectus) upon -
- (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
 - (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.
- (2) the said report shall -
- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and
 - (b) where the body corporate has subsidiaries, - deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 19(3) of this Schedule in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than 2 years after the date at which the company has commenced business.
23. Every person shall for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where -
- (a) the purchase money is not fully paid at the date of the issue of the prospectus;

- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
 - (c) the contract depends for its validity or fulfilment on the result of that issue.
24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.
 25. References in paragraph 7 of this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.
 26. For the purposes of paragraph 9 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.
 27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 5 years, the accounts of the company or business have only been made up in respect of 4 years, 3 years, 2 years or 1 year, Part II of this Schedule shall have effect as if references to 4 years, 3 years, 2 years or 1 year, as the case may be, were substituted for references to 5 years.
 28. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.
 29. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.
 30. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.
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