

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

REPUBLIC OF VANUATU

INTERNATIONAL COMPANIES (AMENDMENT) ACT
NO. 26 OF 1993

Arrangement of Sections

1. Amendment of section 1 of the International Companies Act No. 32 of 1992
2. Amendment of section 7 of the principal Act
3. Amendment of section 9 of the principal Act
4. Amendment of section 14 of the principal Act
5. Amendment of section 16 of the principal Act
6. Amendment of section 23 of the principal Act
7. Amendment of section 29 of the principal Act
8. Amendment of section 46 of the principal Act
9. Amendment of section 59 of the principal Act
10. Amendment of section 60 of the principal Act
11. Amendment of section 72 of the principal Act
12. Amendment of section 74 of the principal Act
13. Amendment of section 76 of the principal Act
14. Amendment of section 78 of the principal Act
15. Insertion of new section 78A in the principal Act
16. Amendment of section 89 of the principal Act
17. Amendment of section 90 of the principal Act
18. Amendment of section 91 of the principal Act
19. Amendment of section 92 of the principal Act
20. Amendment of section 106 of the principal Act
21. Amendment of section 111 of the principal Act
22. Amendment of section 112 of the principal Act
23. Amendment of section 124 of the principal Act
24. Transitional Provisions
25. Commencement

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

REPUBLIC OF VANUATU

Assent: 06/09/93
Commencement: 13/09/93

INTERNATIONAL COMPANIES (AMENDMENT) ACT
NO. 26 OF 1993

An Act to amend the International Companies Act No. 32 of 1992.

BE IT ENACTED by the President and Parliament as follows: -

AMENDMENT OF SECTION 1 OF THE INTERNATIONAL COMPANIES ACT NO. 32 OF 1992

1. The International Companies Act No. 32 of 1992, hereafter referred to as “the principal Act”, is amended in section 1 subsection (1) -
 - (a) in the definition of “distribution” by deleting the word “shareholder” and substituting the word “member”; and
 - (b) in the definition of “seal” by deleting the word “seal”, where it first appears, and substituting the words “seal and common seal”.

AMENDMENT OF SECTION 7 OF THE PRINCIPAL ACT

2. Section 7 of the principal Act is amended in subsection (3) by deleting the words “amendment is passed” and substituting the words “amendment is registered by the Registrar”.

AMENDMENT OF SECTION 9 OF THE PRINCIPAL ACT

3. Section 9 of the principal Act is amended by adding after subsection (2) the following new subsections -
 - “(3) Where expressly permitted by its constitution, a company shall have the power by way of settlement or other dealing or disposition, to give the right to a person not being a member of the company to share in the whole or any part of its gains or profits to the exclusion of the members.

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

- (4) Any settlement or other dealing or disposition made in accordance with subsection (3) shall be treated as if it was a distribution to a member and section 29 shall apply accordingly.”

AMENDMENT OF SECTION 14 OF THE PRINCIPAL ACT

- 4. Section 14 of the principal Act is amended in subsection 5 by deleting the word “articles” and substituting the word “constitution”.

AMENDMENT OF SECTION 16 OF THE PRINCIPAL ACT

- 5. Section 16 of the principal Act is amended in subsection (3) by deleting the word “its” and substituting the words “the company’s”.

AMENDMENT OF SECTION 23 OF THE PRINCIPAL ACT

- 6. Section 23 of the principal Act is amended in subsection (4) by deleting the word “share” in the fifth line and substituting the words “share warrant”.

AMENDMENT OF SECTION 29 OF THE PRINCIPAL ACT

- 7. Section 29 of the principal Act is amended by adding after subsection (2) the following new subsections -

- “(3) Any resolution authorizing a distribution shall record the directors opinion that the company will, after the distribution, satisfy the solvency test and shall record the names of the directors who voted in favour of the resolution.

- (4) A distribution to a member made at a time when the company did not immediately after the distribution satisfy the solvency test as modified by this section may be recovered by the company from the member unless the member –

- (a) received the distribution in good faith and without knowledge of the company’s failure to satisfy the solvency test; and

- (b) has altered his position in reliance on the validity of the distribution, so that having regard to all the circumstances it would be inequitable to require repayment in full or at all, as the case may be.

- (5) Where a distribution has been made and, either

- (a) the procedure set out in subsection (3) has not been followed; or

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

- (b) the procedure set out in subsection (3) was followed but there did not exist reasonable grounds for the opinion set out in the resolution;

those directors who failed to take reasonable steps to ensure that the procedure set out in subsection (3) was followed or who voted in favour of the resolution shall be personally liable to the company to restore the distribution, except in so far as it may be recoverable from the members under subsection (4).

- (6) If in any action brought against a director or member under this section the court is satisfied that the company could properly have made a distribution of lesser value which would not have caused the company to fail the solvency test, the Court may -

- (a) relieve the director from liability in respect of; or

- (b) permit the member to retain

the distribution made up to the value of any distribution that might properly have been made.”

AMENDMENT OF SECTION 46 OF THE PRINCIPAL ACT

- 8. Section 46 of the principal Act is amended by adding after subsection (3) the following new subsection -

“(4) The appointment of an alternate director shall cease –

- (a) at the expiration of the period, if any, for which he was appointed;
 - (b) if his appointor terminates his appointment and gives written notice to that effect to the company;
 - (c) if his appointor for any reason ceases to be a director;
 - (d) if the alternate director resigns by notice in writing to the company;
 - (e) if, in the case of a corporation, it enters into liquidation or ceases to be a body corporate;

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

- (f) if, in the case of an individual, he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (g) if he becomes of unsound mind or of such infirm health as to be capable of managing his affairs.”

AMENDMENT OF SECTION 59 OF THE PRINCIPAL ACT

9. Section 59 of the principal Act is amended in subsection (1) by deleting the words “the company” and substituting the words “a company”.

AMENDMENT OF SECTION 60 OF THE PRINCIPAL ACT

10. Section 60 of the principal Act is amended in subsection (1) -
- (a) by deleting the words “the company” and substituting the words “a company”; and
 - (b) by adding the word “and” after the semi colon in paragraph (b) (i).

AMENDMENT OF SECTION 72 OF THE PRINCIPAL ACT

11. Section 72 of the principal Act is amended -
- (a) in subsection (8) by deleting the words “by company” and substituting the words “by a company”;
 - (b) in subsection (10) by deleting the words “it is related” and substituting the words “it is related”;
 - (c) by adding after subsection (10) the following new subsections –
 - “(11) Where the property of a company continued under Part 11 of this Act was, immediately prior to its continuation, subject to a charge to which this section applies, the company or any person interested in the charge may, within 42 days of the date of continuation, file the documents referred to in subsection (2) and make application to the Registrar in the prescribed form to have the charge registered in accordance with this Part.
 - (12) Upon application being made to register a charge pursuant to subsection (11) -
 - (a) Where, immediately prior to continuation –

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

- (i) the law of the jurisdiction from which the company continued made provision for the registration of charges in similar terms of this Act; and
- (ii) the charge was registered under that law,

the Registrar shall register the charge in accordance with section 74. The registration shall be subject to the terms and conditions, if any, that the registration of the charge was subject to in the company's previous jurisdiction and, where the property of a company was, immediately prior to continuation, subject to other charges registered under the law of its previous jurisdiction, the charge shall be registered with the same priority as it had in relation to those other charges, which the Registrar may also register whether or not application has been made for their registration under subsection (11);

- (b) In any other case, on being satisfied that, having regard to all the circumstances and in particular to the law relating to charges in the company's former jurisdiction, the position of creditors and members will not be prejudiced, the Registrar may on such terms and conditions as seem to him to be expedient, register the charge in accordance with section 74.

- (13) Where the property of a company continued under Part 11 was, immediately prior to continuation, subject to a charge and application is not made to register the charge pursuant to subsection (11), or where the Registrar refuses to register a charge pursuant to subsection (12) that charge shall be subject to the provisions of subsection (4).”

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

AMENDMENT OF SECTION 74 OF THE PRINCIPAL ACT

12. Section 74 of the principal Act is amended in subsection (1) -
- (a) by deleting the word “Division” and substituting the word “Part”;
 - (b) in paragraph (b)(i) by deleting the words “an international” wherever they appear and substituting the word “a”.

AMENDMENT OF SECTION 76 OF THE PRINCIPAL ACT

13. Section 76 of the principal Act is amended by deleting the words “RELEASE CHARGES” in the head note and substituting the words “RELEASE OF CHARGES”.

AMENDMENT OF SECTION 78 OF THE PRINCIPAL ACT

14. Section 78 of the principal Act is amended by deleting the words “shall, by force of this section, in” and substituting the words “shall in”.

INSERTION OF NEW SECTION 78A IN THE PRINCIPAL ACT

15. The following new section is inserted after section 78 of the principal Act -

“EXEMPTION FROM PART 8 GRANTED TO SHIP OWING COMPANIES

- 78A. (1) Notwithstanding anything in this Part, a ship-owning company shall be exempted from registering any charge created by the company and registered in the office of the Commissioner or any Deputy Commissioner of Maritime Affairs in accordance with the Maritime Act [CAP. 131].
- (2) For the purposes of this section, “ship owing company” means a company -
- (a) which is the owner or bareboat charterer of a vessel documented under the Maritime Act [CAP. 131]; and
 - (b) which is engaged principally in the business of ship-owners, bareboat charterers, shippers or businesses directly related thereto.”

AMENDMENT OF SECTION 89 OF THE PRINCIPAL ACT

16. Section 89 of the principal Act is amended in subsection (1) by deleting the words “section 84” and substituting the words “this Part”.

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

AMENDMENT OF SECTION 90 OF THE PRINCIPAL ACT

17. Section 90 of the principal Act is amended in subsection (2) by deleting the words “the company” and substituting the words “a company”.

AMENDMENT OF SECTION 91 OF THE PRINCIPAL ACT

18. Section 91 of the principal Act is amended in paragraph (c) of subsection (9) by deleting the words “they, two” and substituting the words “that the two”.

AMENDMENT OF SECTION 92 OF THE PRINCIPAL ACT

19. Section 92 of the principal Act is amended in paragraph (d) of subsection (2) -
- (a) by deleting the words “local company” and substituting the words “company registered under the Companies Act”; and
 - (b) by deleting the words “the Companies Act” in line 2 and substituting the words “that Act”.

AMENDMENT OF SECTION 106 OF THE PRINCIPAL ACT

20. Section 106 of the principal Act is amended -
- (a) by deleting subsection (1) and substituting the following subsection -
 - “(1) Where the Registrar has reasonable cause to believe that a company is in breach of section 10 or is not carrying on business or is not in operation, the Registrar may serve on the company by post a notice that the name of the company will, upon the grounds set out therein, unless cause is shown to the contrary, be struck off the Register.”;
 - (b) by deleting subsection (2);
 - (c) by deleting subsection (3) and substituting the following subsection –
 - “(3) If the Registrar –
 - (a) in reply to a notice sent to the company under subsection (1), receives from the company a notice that it consents to being struck off the Registrar; or
 - (b) the company does not show cause to the notice served on the company under subsection (1),

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

he shall publish a notice in the Gazette that the name of the company will be struck off the Register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.”;

- (d) by deleting subsection (5) and substituting the following subsection –
 - “(5) If a company fails to pay the increased annual fee payable under section 112 in full on or before the 30th November of the year in which the annual fee falls due, the Registrar may publish in the Gazette and serve on the company a notice stating the amount of the fee payable and stating that the name of the company will be struck off the Register if the company fails to pay the fee within 60 days from the date of the notice.”; and
- (e) in subsection (6) by deleting the words from “by the 31st December” to the end of that subsection and substituting the words “within 60 days of the date of the notice, the Registrar shall strike the name of the company off the Register and shall publish notice of the striking off in the Gazette.”.

AMENDMENT OF SECTION 111 OF THE PRINCIPAL ACT

21. Section 111 of the principal Act is amended -

- (a) in subsection (2) by deleting the full stop at the end of paragraph (o) and substituting a semi colon;
- (b) in subsection (2) by inserting after paragraph (o) the following paragraphs –
 - “(p) \$25 upon the reservation of a name;
 - (q) \$100 upon the filing of a charge pursuant to section 72;
 - (r) \$50 upon the filing of a memorandum of satisfaction or release pursuant to section 76;
 - (s) \$100 for making application for an extension or rectification pursuant to section 77.”; and
- (c) by inserting after subsection (3) the following new subsection -

This Act has been scanned but it has not been proofed. Check each provision with the Act in the annual volumes.

“(4) A company incorporated under the Companies Act which is continued under Part 11 shall be exempted from the fee payable for filing a charge under section 72 in respect of any charge which, immediately prior to the company’s continuation, was registered under the Companies Act.”

AMENDMENT OF SECTION 112 OF THE PRINCIPAL ACT

22. Section 112 of the principal Act is amended by deleting subsection (1) and substituting the following subsection -

- “(1) Every company shall, on or before 30 June of each year, pay to the Registrar an annual fee as follows –
- (a) \$300 where the name of the company was on the Register on 31st December of the previous year; or
 - (b) \$150 where the company was registered on or after 1st January of that year.”

AMENDMENT OF SECTION 124 OF THE PRINCIPAL ACT

23. Section 124 of the principal Act is amended -

- (a) in subsection (1) by deleting the words “Except as provided in subsection (2) any person upon” and substituting the words “Except as provided in subsection (3), any person may upon”;
- (b) by inserting after subsection (2) the following new subsection -

“(3) An entry in the Registry of Charges in respect of a company may be inspected only by any debentures holder, chargee or liquidator of the company, by its registered agent or by any person authorized in writing by the registered agent.”

TRANSITIONAL PROVISIONS

24. In respect of any company continued under Part 11 on or before the commencement of this Act, the period of 42 days referred to in section 72 subsection (11) shall commence on the coming into force of this Act and not upon the date of continuation.

COMMENCEMENT

25. This Act shall come into force on the date of its publication in the Gazette.
