

DRAFT

COMPANIES AMENDMENT BILL

A Bill to amend the Companies Act No: 10/96

Name

1. This law shall be cited as the “*Companies Amendment Act*”.

Company’s Powers, Validity of Action and Constructive Notice

2. The Principal Act is amended by inserting after section 7 of the Act new sections 7A, 7B and 7C as follows:

Company’s Powers

7A *Every company shall have, for the furtherance of its objects as stated in its memorandum, all the powers of a natural person.*

Validity of Actions

7B (a) *A company shall not carry on an object or do an act in furtherance of an object not stated in its memorandum.*

(b) *Notwithstanding subsection (a), nothing done by a company and no transfer of any property to or by a company shall be invalid, void or unenforceable by reason only of the fact that the company was without capacity or power to do it, or to execute or give, or take such transfer.*

(c) *Notwithstanding subsection (b) the Court may, on the application of—*

(i) *a member; or*

(ii) *the holder of a debenture secured by a charge over the major part of the company’s property or of a debenture holders’ representative; or*

(iii) *a creditor of the company who satisfies the Court that he is, or is likely to be, materially prejudiced by the company's act or transfer of property,*

prohibit or restrain the doing of any act or the transfer of any property in breach of subsection (a).

(d) *Nothing in subsection (b) shall relieve an officer or former officer of the company from liability to the company for a breach of the provisions of its memorandum or articles or for entering into a transaction in breach of subsection (a), and nothing in subsection (b) shall restrict the right of a member to apply to the Court under section 74A (remedy in cases of oppression) or the right of a member to present a petition for the winding up of the company under section 80(a)(7).*

No constructive Notice of Certain Matters

7D (a) *No person shall be affected by, or be deemed to have notice or knowledge of, the contents of a document relating to a company or to a company registered outside the Maldives to which section 94 applies by reason only that the document has been lodged with the Registrar or is available for inspection at an office of the company.*

(b) *Except where that person has or ought, by virtue of his position in or relationship to a company, to have knowledge of the fact, the company may not assert against a person who has dealt with the company or with a person who has derived title or other rights from the company that –*

(i) *the memorandum or articles have not been complied with;*

(ii) *a person named as such in the most recent notice lodged under section 46A is not a director, manager or secretary of the company;*

- (iii) *the place named in the most recent notice lodged under sections 46B or 94(a)(5) is not the registered office of the company;*
- (iv) *a person held out by the company to be an officer or agent of the company has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the company and are usual for an officer or agent of the type concerned to exercise;*
- (v) *an officer or agent of the company having authority to issue or certify a copy of a document on behalf of the company did not have authority to warrant the genuineness of the document and the accuracy of the copy so issued; or*
- (vi) *a document issued on behalf of a company and bearing its seal attested by two or more persons who can under paragraphs (ii) and (iv) be assumed to be officers of the company, or issued on behalf of the company by a director, agent or employee of the company with actual and usual authority to issue the document is not valid or genuine.*

Certificate of Incorporation

3. Section 8 of the Principal Act is amended by designating that section as subsection (a) and by inserting a new subsection (b) as follows:

(b) A certificate of incorporation given by the Registrar shall be conclusive evidence that all the requirements of this act in respect of registration and all matters precedent and incidental thereto have been complied with and that on and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

Reservation of Company Name

4. Section 10 of the Principal Act is amended by adding further paragraphs (g) and (h) as follows:

- (g) *The Registrar of Companies may, on application, reserve the name of a company for the purposes of incorporation of a proposed company or for the change of name of a registered company. The reservation shall be made as prescribed by Regulations under this Act.*
- (h) *The reservation of the name of a company that it is proposed to register or in respect of a proposed change of the name of an existing company does not give the applicant or any proposed or existing company in respect of which the application is made any proprietary right or interest in the name.*

Register of Members

5. The Principal Act is amended by adding to section 16 a new subsection (c) as follows:

- (c) *This section shall not apply to a company the share in which can be transferred through a scheme establishing a central depository.*

Rectification of Share Register

6. The Principal Act is amended by inserting a new section 16A as follows:

16A Rectification of Share Register

- (1) *Where the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Court –*
- (a) *for rectification of the share register;*
- (b) *for compensation for loss sustained; or*
- (c) *for both rectification and compensation.*
- (2) *On an application under this section the Court may order –*
- (a) *rectification of the register;*

- (b) *payment of compensation by the company or a director of the company for any loss sustained; or*
 - (c) *rectification and payment of compensation.*
- (3) *On an application under this section, the Court may decide –*
- (a) *any question relating to the entitlement of a person who is a party to the application to have his name entered in, or omitted from, the register; and*
 - (b) *any question necessary or expedient to be decided for rectification of the register.*

Register of Debenture Holders

7. The Principal Act is amended by inserting after the new section 16A the following section 16B:

- 16B (a) Every company which issues debentures shall at its registered office keep a register of debenture holders which shall contain the following particulars –*
- (i) *the names and addresses of the debenture holders;*
 - (ii) *the amount of debentures held by them.*
- (b) *This section shall not apply to a company the debentures in which can be transferred through a scheme establishing a central depositary.*

Alterations of Memorandum and Articles of Association

8. Section 19 of the Principal Act is amended by redesignating that section as subsection (a) and by inserting a new subsection (b) as follows:

- (b) *The company shall, within 14 days of the passing of a special resolution to alter its Memorandum or Articles of Association (as the case may be) file with the Registrar a copy of the resolution*

and, if the Registrar so requires, a copy of the Memorandum or Articles of Association as altered.

Offer of Shares or Debentures to the Public

9. Section 23 of the Principal Act is amended by adding a new subsection (c) as follows:

(c) An exemption from the application of subsection (b) may be granted by the Authority established under the Securities Act on such terms and conditions as the Authority may impose.

Borrowing from the Public

10. Section 25 of the Principal Act including the heading to that section is repealed. That section is replaced by the following new sections 25 and 25A:

Borrowing from the Public

25. (a) *If a company issues or agrees to issue debentures of the same class to more than 25 persons, or to any one or more persons with a view to the debentures or any of them being offered for sale to more than 25 persons, the company shall, before issuing any of the debentures –*

- (i) sign under its seal an agency deed; and*
- (ii) procure that the deed is also signed by a person qualified to act as debenture holder's representative who shall enter into the deed as agent for and on behalf of all of the persons who are or may become holders of debentures of the same class.*

(b) No agency deed shall cover more than one class of debentures.

(c) The debenture holder's representative shall have the qualifications and the debenture agency deed shall contain the matters provided for in regulations made under this Act.

25A Registering particulars of Charges

- (a) *Every company shall, within 28 days of the creation by the company of any charge or of making any issue of debentures charged on or affecting any property of the company, register with the Registrar of Companies a statement of the particulars specified in subsection (c) or (d)*
- (b) *Where –*
- (i) *a company acquires any property which is subject to a charge referred to in subsection 9a), particulars of which would, if it had been created by the company after the acquisition of the property, have been required to be registered;*
 - (ii) *a registered foreign company under section 94 has, before registration, created a charge referred to in subsection (a), particulars of which would, if it had been created by the company while it was registered as a foreign company, have been required to be registered; or*
 - (iii) *a registered foreign company under section 94 has before registration acquired property which is subject to a charge referred to in subsection (a), particulars of which would, if it had been created by the company after the acquisition and while it was registered as a foreign company, have been required to be registered;*

the company shall, within 28 days after the date on which the acquisition is completed or the date of the registration of the company in the Republic of Maldives, as the case may be, cause a statement of the particulars specified in subsection (c) or (d) to be registered.

(c) *Subject to subsection (d), the particulars required to be given in the statement are –*

- (i) *if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;*
- (ii) *the amount secured by the charge;*
- (iii) *a description sufficient to identify the property charged;*
- (iv) *the name of the person entitled to the charge; and*
- (v) *any prohibition or restriction contained in the instrument creating the charge, or in any agency deed, or the power of the company to create any other charge or issue debentures ranking in priority to or equally with the charge or debentures in respect of which the application is made.*

(d) *Where the holders of a series of debentures are entitled to the benefit of a charge the particulars required to be given in the statement are –*

- (i) *the total amount secured by the whole series;*
- (ii) *the dates of the resolution authorising the issue of the series and the date of the agency deed or other instrument by which the security is created or defined;*
- (iii) *the name of the debenture holders' representative; and*
- (iv) *the particulars required to be given by paragraphs (iii) and (v) of subsection (c).*

(e) *Where a charge (including an issue of debentures), particulars of which are required to be lodged under subsection (a) –*

- (i) *is transferred by the chargeholder or debenture holders' representative;*
- (ii) *is modified in a material respect;*
- (iii) *has its priority altered in relation to any other charge or issue of debentures,*

the company or in the case of transfer, the transferee, shall register particulars, of the name and description of the transferee and of any material modification to the terms of the charge and of any alteration in priority, such particulars to be registered within 28 days after the making of such transfer or modification or alteration or priority.

(f) (i) *Where, in relation to a charge particulars of which are required to be registered under subsection (a) –*

- (1) *the debt for which the charge was given has been paid or satisfied in whole or in part; or*
- (2) *the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,*

the company shall register a certificate of satisfaction in whole or in part, or of the fact that the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be.

(ii) *The certificate shall be supported by evidence sufficient to satisfy the Registrar of the payment,*

satisfaction, release or cessation referred to in paragraph (i).

25B. Unregistered charge void

- (1) A charge, particulars of which are required to be registered under s.25A, shall be void so far as security on the company's property is conferred by the charge, unless the particulars required by s.25A(c) and (d) are registered within 28 days after the date the creation of the charges is required by s.25A(a).
- (2) This section shall not prejudice a contract or an obligation for repayment of the moneys secured by the contract or obligation and when a charge becomes void under this section the money secured by the charge shall immediately become payable despite a provision to the contrary in a contract.

25C. Charges to secure fluctuating amounts

- (1) Where a charge, particulars of which require registration under s.25A, is expressed to secure the sums of money due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (c) of subsection (5) of s.25A shall state the maximum sum deemed to be secured by the charge, and the charge is void, so far as a security on the company's property is conferred by the registration, as respects an excess over the stated maximum.
- (2) For the purposes of subsection (1), if at any time after the payment, prior to the commencement of the winding up of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are delivered to the Registrar for registration, then, as from the date of the delivery, the charge, if otherwise valid, shall be effective to the extent of the increased maximum sum of money except as regards a person who, prior to the date of the delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

25D. Rectification of register of particulars of charges

- (1) The Authority, on being satisfied –
 - (a) That the omission to register particulars of a charge within the time required by this Act, or
 - (b) That the omission or misstatement of any particulars with respect to a charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or members of the company, or
 - (c) That on other grounds it is just and equitable to grant relief,

may, on the application of the company or a person interested, and on the terms that seem to the Authority just and expedient, order that the time for registration shall be extended, or that the omission or misstatement shall be corrected.

- (2) When the Authority grants an extension of time for registration, the charge shall not, unless the Authority otherwise orders, adversely affect a person who, prior to the date of actual registration of particulars of the charge, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge, and shall be ineffective against the liquidator and any creditors of the company if the winding up of the company commences before the date of actual registration.

Form of Prospectus

11. The Principal Act is amended by redesignating the existing section 26 as subsection (a) and by inserting new subsections (b) and (c) in section 26 as follows:

- (b) *Notwithstanding the provisions of paragraph (a), every prospectus shall -*
- (i) *be printed in a type and size approved by the Registrar;*
- (ii) *be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;*
- (iii) *be signed by every director or person named in the prospectus as a proposed director, or by his agent authorised in writing;*
- (iv) *be filed with the Registrar on or before the date stated in the prospectus to be the date of the prospectus.*
- (c) *The Registrar of Companies shall not register a prospectus unless the prospectus has been approved by the Authority and the Authority has stated in writing that it has approved the prospectus.*

Contents of the Prospectus

12. Section 27 of the Principal Act shall be amended by repealing subsection (c) and replacing it with the following subsection:

- (c) *All such information as investors and their professional advisors would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of:*
- (i) *the assets and liabilities, financial position, profits and losses and prospects of the company; and*
 - (ii) *the rights attaching to the shares or debentures which are offered under the prospectus.*

False Information in the Prospectus

13. Section 28 of the Principal Act is amended by deleting the words “*MRf100,000*” and substituting the words “*MRf1,000,000 or to imprisonment for a term not exceeding five years or to both*”.

Variation of Class Rights

14. Section 30 of the Principal Act is amended by repealing the present section 30 and substituting the following section:

30. Variation of class rights

- (1) *Where shares are divided into different classes, the rights attached to a class shall not be varied except to the extent and in the manner provided in the section and in the memorandum and articles.*
- (2) *Subject to the other provisions of this section a company may, by special resolution, alter its memorandum and articles by –*
 - (a) *inserting a provision regarding the variation of the rights of any class of shares; or*
 - (b) *modifying the terms of any such provision.*
- (3) *Where the memorandum expressly forbids any variation of the rights of a class of shares, or contains a provision regarding the variation and expressly forbids any alteration of that provision, the rights of the class or the provision for variation shall not be altered*

except with the sanction of the Court under an arrangement under section 74A.

- (4) An alteration under subsection (2) shall require the prior written consent of the holders of at least three fourths of the issued shares of each class or the sanction of a special resolution of the holders of the shares of each class and shall, for the purposes of subsections (7) to (11) be deemed to be a variation of the rights of each class of shares.*
- (5) Notwithstanding the Memorandum and Articles, the rights attached to a class of shares first issued after the commencement of this Act shall not be varied except with the written consent of the holders of at least three fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that class.*
- (6) A resolution which would have the effect of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class or of reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class, shall be deemed to be a variation of the rights of that class.*
- (7) Where the rights of a class of shares are varied, the holders of not less in the aggregate than 10 per cent of the issued shares of that class may apply to the Court to have the variation cancelled.*
- (8) An application under subsection (7) shall be made within 60 days of the date on which the variation was effected and may be made, on behalf of the shareholders entitled to make the application, by any one or more of their number as they may appoint in writing.*
- (9) Where an application is made under subsection (7) the company shall forthwith lodge with the Registrar a notice in that behalf.*

(10) *The Court, after hearing the applicant and any other person interested in the application who applies to the Court to be heard, shall –*

(a) *if it is satisfied that the variation would unfairly prejudice the shareholders of any class, make an order cancelling the variation; and*

(b) *if not so satisfied, make an order confirming the variation.*

(11) *Where an order is made under subsection (10), the company shall, within 28 days, lodge with the Registrar a copy of the order.*

Share or Debenture Certificate

15. Section 34 of the Principal Act is amended by repealing the existing heading and subsection (a) and replacing them as follows:

Share and Debenture Certificate

34. (a) *Every company shall issue to its members a share certificate and to the holders of its debentures a debenture certificate. The share certificate is prima facie evidence of the shareholder's title to the share specified in the certificate and the debenture holder's certificate shall be prima facie evidence of the debenture holder's title to the debenture specified in the certificate.*

16. Section 34 of the Principal Act is further amended by adding additional subsections (c) and (d) as follows:

(c) *Subject to section 53 of the Securities Act, a share or debenture may be held by a nominee on behalf of the person entitled to the share or debenture and the relevant share certificate or debenture certificate shall be issued in the name of the nominee. except as provided in any legislation regulating the offer of securities to the public, a company shall not be affected by any notice to the entitlement of any person other than the nominal holder of the shares and the company shall not be affected by notice of any*

expressed, implied or constructive trust, constituted under any foreign law and no notice of such trust shall be entered in the Register of members or debenture holders or be receivable by the Registrar of Companies.

- (d) *Any requirement made by this section that a company issue a share or debenture certificate shall not apply to a company the shares or debentures of which can, as the case may be, be transferred through a scheme establishing a central depository.*

Increase of Capital

17. Section 40 of the Principal Act is repealed and replaced by adding the following section:

40. (a) *Where a company is authorised by its Articles, it may in general meeting alter its Memorandum so as to –*
- (i) *increase the number of its shares by creating new shares;*
 - (ii) *reduce the number of its shares by –*
 - (1) *cancelling shares which have not been allotted or agreed to be allotted; or*
 - (2) *consolidating its existing shares, whether issued or not, into a smaller number of shares;*
 - (iii) *subdivide its shares into shares of a smaller amount if the proportion between the amount paid and the amount, if any, unpaid on each reduced share remains the same as it was in the case of the share from which the reduced share is derived; or*
 - (iv) *consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares.*

- (b) *Where shares are consolidated, the amount paid and any unpaid liability thereon, and any fixed sum by way of dividend or repayment to which such shares were entitled, shall also be consolidated.*
- (c) *Where a company has altered its share capital in a manner specified in subsection (a), it shall within 14 days file a notice to that effect with the Registrar of Companies.*
- (d) *A notice under subsection (c) shall include particulars with respect to the classes of shares affected and, in the case of an issue of shares, the conditions subject to which the new shares have been or are to be issued.*

Duties of Directors

18. The Principal act is amended by inserting after section 48 a new section 48A as follows:

Duties of Directors

- 48A (a) *It shall be the duty of the directors of a company –*
- (i) *to exercise their powers in accordance with this Act and within the limits and subject to the conditions and restrictions established by the company's memorandum and articles;*
 - (ii) *to obtain the authorisation of a General Meeting before doing any act or entering into any transaction for which the authorisation or consent of a General Meeting is required by this Act or by the company's Memorandum or Articles;*
 - (iii) *to exercise their powers honestly in good faith in the best interests of the company and for the respective purposes for which such powers are explicitly or impliedly conferred;*

- (iv) *to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;*
- (v) *to account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions, provisions and compensation for loss of office in respect of their directorships of any company which are approved by the company under section 48B;*
- (vi) *not to make use of any confidential information received by any of them on behalf of the company as directors otherwise than for the benefit of the company as a whole, either during their terms of office or thereafter unless such use is approved by the company under section 48B;*
- (vii) *not to compete with the company or become a director or officer of a competing company, unless it is approved by the company under section 48B;*
- (viii) *if they have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to declare each of their respective interests to the meeting of the directors of the company at which the contract or transaction is first taken into consideration or to the first meeting of the directors held after the interest arises (whichever is the later) and in such declaration to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction;*

- (ix) *not to use any assets of the company for any illegal purpose or purpose in breach of paragraphs (a) and (c), and not to do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);*
 - (x) *to transfer forthwith to the company all cash or assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use them only for the purposes of the company;*
 - (xi) *to attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse;*
 - (xii) *to keep proper accounting records and make such records available for inspection in accordance with the provisions of sections 63 and 64.*
- (b) *Subject to clause 48A the duties imposed by this section shall be owed to the company, and not to the members, debenture holders or creditors of the company.*
- (i) *An application may be made to the Court by any member or in the case of a breach of paragraphs (i), (ii), (ix), (x) and (xii) of subsection (a) by any debenture holder for a declaration that any act or transaction, or proposed act or transaction, by the directors or any director or former director involves a breach of any of their said duties, and an injunction to restrain the directors or any director or former director from doing any such proposed*

*act or entering into any such proposed transaction;
and*

- (ii) *an action for damages for breach of the said duties may be brought in the name of the company by a member under section 74B.*
- (c) (i) *For the purposes of paragraph (viii) of subsection (a) a general notice given to the other directors by a director to the effect that he is an officer or member of a specific body of persons whether corporate or unincorporated and is to be regarded as interested in any contract which may, after the date of the notice, be made with that body shall, subject to subparagraph (1) be a sufficient declaration of interest in relation to any contract so made if –*
 - (1) *it specifies the nature and extent of his interest in the body;*
 - (2) *his interest is not different in nature or greater in extent than the nature and extent specified in the general notice at the time any contract is so made.*
- (ii) *No notice referred to in paragraph (a) shall have effect unless –*
 - (1) *it is given at a meeting of the directors; or*
 - (2) *the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.*
- (d) *The secretary shall record every declaration under paragraph (viii) of subsection (a) and under subsection (c) in the minutes of the meeting at which it was made.*

- (e) (i) *A copy of every declaration made under subsection (a)(viii) or under subsection (c) shall, within three days after it is made be entered by the secretary in an interests register kept for the purpose.*
- (ii) *The interests register shall be open for inspection by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company and at any meeting of the directors if any director so requests.*
- (f) *Nothing in this section shall limit the operation of sections 7B, 7C and 7D.*

48A Approval of the Company

- (a) *The approval of the company for the purposes of paragraphs (v), (vi) and (vii) of section 48A(a) shall require that after full disclosure of all material facts, including the nature and extent of any interest of the director, the transaction has been specifically authorised by either –*
 - (i) *a form of resolution which has been circulated to all the members and is signed by three fourths of all members entitled to attend and vote at a General Meeting; or*
 - (ii) *an ordinary resolution of the company passed at a General Meeting at which neither the director concerned, nor the holder of any share to which he is entitled, either directly or indirectly, has voted as a member on such resolution, or if such person has voted such vote or votes are not counted.*
- (b) *Subject to subsection (c) the approval of the company in accordance with subsection (a) may be given either before or after the occurrence of the transaction to which it relates.*

- (c) *A resolution approving a transaction or transactions or series of related transaction which has already taken place shall not be effective for the purposes of subsection 9a) unless it was signed or passed not later than 15 months after the date when the transaction or the first of the series of transactions took place.*

Removal of Directors

19. Section 49 of the Principal Act is amended by deleting subsection (a) and substituting the following subsection (a):

- (a) *A public company may be ordinary resolution at a General Meeting remove a director provided that 28 days notice of the resolution is given to all members entitled to vote on the resolution.*

Notice of Board Meetings

20. Section 50 of the Principal Act is amended by designating the section as (a) and by adding the following subsection (b):

- (b) *Not less than two days notice shall be given of a meeting of directors to all directors provided that all directors entitled to receive notice of a meeting may waive this requirement and agree to a shorter period of notice.*

Chairman of the Board

21. Section 51 of the Principal Act is amended by inserting after the words “Chairman of the Board shall” the words “be appointed by the Directors and” and by replacing the word “member” by the word “members”.

Agenda for the Annual General Meeting

22. Section 55 of the Principal Act is amended by adding the a new subsection (d) as follows:

- (d) *The appointment of the auditor*

Powers Exercised by Special Resolution

23. The Principal Act is amended by inserting after section 56 a new section as follows:

Matters requiring approval of ordinary resolution

56A *Notwithstanding the provisions of the Memorandum and Articles of Association the directors of a company shall not, without the approval of an ordinary resolution of the General Meeting –*

- (i) *enter into a major transaction;*
- (ii) *issue any new or unissued shares in the company unless the shares have first been offered on the same terms and conditions to all the existing members or to all the holders of the shares of the class or classes being issued, in proportion as nearly as may be to their existing holdings*

provided that no lender or other person dealing with the company shall be concerned to see or inquire whether the conditions of this subsection have been fulfilled and no debt incurred or contract entered into with the company by a person dealing with it shall be invalid or ineffectual, except in the case of actual notice to that person, at the time when the debt was incurred or the contract was entered into, that the company was acting in breach of this subsection.

Proxies to be Used for Named Meeting

24. Section 59 of the Principal Act is amended by inserting after the words *the proxy shall be appointed in writing* the words *in relation to an identified meeting*.

Voting

25. Section 62 of the Principal Act is amended by deleting from subsection (3) the words *votes for the declaration of dividends or for the winding up resolution* and substituting the words *may be entitled to vote and the Articles of Association may provide that the holders of preference shares shall not be entitled to exercise any vote in relation to their shares except where the dividend on their shares is in*

arrears for more than six months or upon a resolution for the voluntary winding up of the company.

Duty to Keep Accounting Records

26. Section 63 of the Principal Act is amended by inserting in subsection (a) after the words *every company shall keep* the words *in the Dhivehi or English language or shall have available a translation into one of those languages.*

Passing of Accounts

27. Section 65 of the Principal Act is amended by deleting the words *the Board of Directors* and substituting the words *by two directors on behalf of the Board of Directors.*

Annual Accounts and Audit

28. Section 66 of the Principal Act shall be amended by deleting the words in subsection (c) *between MRf5,000 and MRf100,000* and replacing them with the words –

not exceeding MRf500,000 or imprisonment for a term not exceeding one year or to both.

Contents of the Accounts

29. Section 67 of the Principal Act is repealed and replaced by the following section:

67. Every company shall in the statement of income and expenses and profit and loss referred to in section 66 give a true and fair view of the profit or loss of the company for the financial year. The accounts of every public company shall be prepared in accordance with and shall comply with international accounting standards.

Accounts and Reports Delivered to the Registrar

30. Section 69 of the Principal Act is amended by:

- (a) Deleting the words in subsection (b) *not less than MRf10,000 and not more than MRf30,000* and replacing them by the words *not exceeding MRf500,000 or imprisonment for a term of one year or to both.*
- (b) Place subsections (c), (d) and (e) in a separate section under the heading *Registrar of Companies* and redesignate them as (a), (b) and (c).

Appointment of Auditors

31. Section 70 of the Principal Act is amended by adding an additional subsection (d) as follows:

- (d) *A private company shall not be required to appoint an auditor provided that its chief financial officer shall provide a certificate stating the matters set out in section 71(b) and the certificate shall be included with the accounts submitted to the members for the purposes of the Annual General Meeting of the company.*

Auditor's Report

32. Section 71(b)(2) of the Principal Act is amended by deleting paragraph (2) and replacing it by the following paragraph:

- (2) *Whether or not, in their opinion, according to the best of their information and the explanations given to the and as shown by the books of the company -*
 - (1) *the balance sheet is properly drawn up so as to give a true and fair view of the company's affairs as at the end of its financial year; and*
 - (2) *the profit and loss account is properly drawn up so as to give a true and fair view of the results of the business of the company for its financial year.*

Special Meeting of Shareholders

33. The Principal Act is amended by inserting a new section 72A following the existing section 72 as follows:

Special Meeting of Shareholders

72A *A Special Meeting of shareholders –*

- (a) *may be called at any time by the Board of Directors;*
- (b) *Shall be called by the Board of Directors on the written request of members holding shares carrying together not less than 10% of the voting rights entitled to be exercised at the meeting.*

Resolution in Lieu of Meeting

34. The Principal Act is amended by inserting a new section 72B as follows:

Resolution in Lieu of Meeting in the Case of Private Companies

- 72B (a) *Subject to subsections (b) and (c) in the case of a private company a resolution in writing signed by all of the members who would be entitled to vote on that resolution at a General Meeting of members is as valid as if it had been passed at a meeting of those members.*
- (c) *It shall not be necessary for a private company to hold an Annual General Meeting of members under section 54 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subsection (a).*
- (d) *A resolution may be signed under subsection (a) or (b) of this section without any prior notice being given to shareholders.*

Personal Action Against the Directors

35. The Principal Act is amended by repealing paragraph (d) of section 74 and by inserting after section 74 the following new sections: 74A, 74B, 74C, 74D and 74E as follows:

Prejudiced Shareholders

74A (a) *A member or former member of a company, who considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity or in any other capacity, may apply to the Court for an order under this section.*

(b) *If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit including, without limiting the generality of this subsection, an order -*

(i) *requiring the company or any other person to acquire the shareholder's shares; or*

(ii) *requiring the company or any other person to pay compensation to a person; or*

(iii) *regulating the future conduct of the company's affairs; or*

(iv) *altering or adding to the company's memorandum or articles; or*

(v) *appointing a receiver of the company; or*

(vi) *directing the rectification of the records of the company; or*

(vii) *ordering the company to be wound up; or*

(viii) *setting aside action taken by the company or the Board of Directors in breach of this Act or the memorandum or articles of the company.*

(c) *No order may be made against the company or any other person under subsection (b) of this section unless the*

company or that person is a party to the proceedings in which the application is made.

Representative Actions

74B (a) *Subject to subsection (b) a member may, with leave of the Court, maintain an action in a representative capacity for himself and all other members of the company suing for and on behalf of the company to enforce, or obtain a remedy for the breach of, any right, duty or obligation, owed to the company under this Act or under any other law in force that could be enforced by the company itself.*

(b) *An applicant for leave to commence an action under subsection (a) shall give not less than 7 days notice of the application to the company, and, if the Court is satisfied that the applicant -*

(i) *was a member at the time of the transaction or other event giving rise to the cause of action;*

(ii) *has made reasonable efforts to cause the company to commence or diligently prosecute the action on its own behalf; and*

(iii) *is acting in good faith and it is prima facie in the interests of the company and its members that the action be commenced*

the Court may grant leave to commence an action on such terms as it thinks fit.

(c) *An action commenced under this section shall not be discontinued, settled, or withdrawn without leave of the Court and, if the Court determines that the interests of the members or any class of members may be substantially affected by the discontinuance, settlement or withdrawal, it may, in its discretion, direct that notice in manner, form and*

content satisfactory to the Court shall be given, at the expense of the company, or any other party to the action as the Court directs, to the members or class of members, whose interests the Court determines may be so affected.

- (d) *In any proceedings under this section the Court shall have power to order that any sum found to be payable by a defendant shall be paid to members or former members of the company instead of to the company itself.*

Restraining Orders

74C (a) *Subject to subsection (b) the Court may on the application of a member restrain a company from –*

- (i) *doing any act or entering into any transaction which is unlawful or beyond the powers of the company or which is in breach of the memorandum or articles;*
or
- (ii) *acting on any resolution not passed in accordance with the provisions of this Act and the articles,*

and may declare any such act or transaction already done or passed to be void.

(b) *Subsection (a) shall -*

- (i) *not affect the right of a third party acquired against the company;*
- (ii) *not affect the right of the application to bring proceedings against a director under section 74E(a) or apply to the Court under section 74B.*

(c) *In any proceedings under this section the Court may, if it thinks fit, order that the member shall give security for the costs of the company and may direct that the application be heard in Chambers.*

Order for Costs

- 74D (a) *In any proceedings under section 74B or 74C the Court may at any time order the company to pay to the applicant interim costs including legal fees and disbursements but the applicant shall account for any sum paid to him on the final disposition of the proceedings.*
- (b) *Where proceedings under section 74B or 74C are defended by the company and the Court considers that in defending the proceedings the directors of the company acted without reasonable ground, it may order that the applicant's costs shall be paid by the directors personally and that any costs ordered to be paid by the company to the applicant shall be reimbursed to the company by the directors personally.*
- (c) *Any liability incurred by the directors under subsection (b) shall be the joint and several liability of all persons who were directors of the company at the time when the company decided to defend the proceedings, other than a director who proves that he dissented from the resolution or decision or had no knowledge of and was not a party to the decision.*

Personal Action by Shareholders

- 74E (a) *A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder.*
- (b) *A shareholder of a company may bring an action against the company for breach of a duty owed by the company to him or her as a shareholder.*
- (c) *The Court may, in any proceedings brought under subsection (a) or subsection (b) if it is satisfied that it is just and equitable to do so, make an order requiring a director of the company in the case of an action under subsection (a)*

or the Board of the company in the case of an action under subsection (b), to take any action that is required to be taken by the Memorandum or Articles of Association of the Company or by this Act.

Result of the Commencement of the Winding Up Process

36. Section 84 of the Companies Act is amended by designating the existing section 84 as a subsection (a) and by adding the following subsections (b), (c) and (c):

(b) At any time after the presentation of a petition and before a winding up order is made, the company, a creditor or a shareholder who is liable pursuant to section 18(b) to contribute any amount unpaid on his shares may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

(c) With effect from the commencement of the winding up of a company –

(i) the liquidator has possession and control of the company's assets;

(ii) the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised for the purposes of the winding up process;

(iii) unless the liquidator agrees or the Court orders otherwise, a person must not

(1) commence or continue legal proceedings against the company or in relation to its property and all existing legal proceedings shall be stayed; or

(2) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company;

and any proceedings put in force against the property of the company after the commencement of the winding up without the leave of the Court or the liquidator shall be void;

- (iv) an alteration must not be made to the rights or liabilities of a shareholder of the company;*
 - (v) a shareholder must not exercise a power under the memorandum or articles of the company or this Act except for the purposes of this Part of the Act;*
 - (vi) the memorandum or articles of the company must not be altered.*
- (d) Subsection (c) of this section does not affect the right of a secured creditor, to take possession of, and realise or otherwise deal with, property of the company over which that creditor has a charge.*

Appeal from Decisions of the Registrar and Inspection of Register

37. The Principal Act is amended by inserting after section 100 the following sections 100A, 100B and 100C as follows:

Appeal from decisions of the Registrar

100A Any person aggrieved by a decision of the Registrar of Companies under this Act or Regulations may, within 21 days of the date on which he is notified of the decision, appeal to the Court against the decision, and the Court may confirm, revise or vary the decision or make such order or give such directions in the matter as it thinks fit.

Inspection of Register

- 100B (a) Any person may –*
- (i) inspect a document which has been filed with the Registrar under this Act; or*

- (ii) *require a certificate of the registration of a company or any other certificate issued under this Act or a copy of or extract from any document which has been lodged to be given or certified by the Registrar.*
- (b) *Any register which a company is required to keep under sections 16, 16A and 46A(a) shall be available for inspection at the registered office of the company during ordinary business hours.*
- (c) *Any person permitted by this Act to inspect any register, minute book or document of a corporation may enter the relevant premises under subsection (a) and make copies of or take extracts from the register, minute book or document.*

Minor Amendments

100C The Principal Act is hereby amended by making to the sections of the Act listed in the Schedule the amendments which are set out alongside each respective section.

Definitions

38. Section 102 of the Principal Act is amended by deleting the definition of *Special Resolution* and replacing it with the following definition:

“Special Resolution” means a resolution which has been passed by a majority of not less than 75% of such members as, being entitled so to do, vote in person or by proxy at a general meeting of which not less than 21 days notice specifying the intention to propose the resolution as a special resolution has been given, provided that a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days notice has been given where it is so agreed by a majority in number of members having the right to attend and vote at that meeting who together hold not less than 95% in nominal value of the shares giving that right.

39. Section 102 of the Principal Act is further amended by inserting the following additional definitions:

“Authority” means the Capital Market Development Authority under the Securities Act;

“Central Depository” has the meaning given in the Securities Act;

“Charge” includes a mortgage or an agreement to give a mortgage and any other instrument creating security over the assets of a company;

“Debenture holders’ representative” means a person designated as such in an agency deed;

“Major transaction” in relation to a company means:

- (i) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company’s assets before the acquisition;*
- (ii) the disposition of, or an agreement to dispose of, the assets of the company the value of which is more than half the value of the company’s assets before the acquisition;*
- (iii) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company’s assets before the transaction;*

“Offer” includes an invitation to make an offer;

“offer to the public” has the meaning set out in subsection (b);

“Passive shareholder” means a member who, on subscribing for or taking a transfer of shares, enters into an agreement in writing with the company and gives a binding undertaking to the company –

- (i) not to exercise any vote at a general meeting of the company to which the shares may be entitled;*
- (ii) not to nominate any person to be a director;*

- (iii) *not to participate in the management of the company;*
- (iv) *agreeing that the chairman may refuse to allow to be counted any vote which the member may cast at a general meeting of the company.*

“Registered office” means the premises required to be kept by a company under section 46B;

“Related corporation” has the meaning given in subsection (c);

“Same class of debentures” means debentures which have attached to them the same rights, privileges, limitations and conditions including the right to rank equally for repayment when any security for the debenture is enforced or the company is wound up;

“Subsidiary” has the meaning given in subsection (d).

40. Section 102 of the Principal Act is further amended by adding the following subsections (b), (c) and (d):

- (b) *A reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including -*
 - (i) *a reference to offering the shares or debentures to any section of the public, however selected, whether as employees or clients of or purchasers of goods from the offeror;*
 - (ii) *a reference to offering shares or debentures to individual members of the public selected at random;*
 - (iii) *a reference to offering shares or debentures to a person if the person became known to the offeror as the result of any advertisement made by or on behalf of the offeror and it was intended or likely to result in the public seeking further information or advice about any investment opportunity or services; and*

whether or not any such offer is calculated to result in the shares or debentures becoming available for subscription by persons other than those receiving the offer back but shall not include –

- (i) an offer to enter into an underwriting agreement;*
 - (ii) an offer made to a person whose ordinary business is to buy or sell shares or debentures whether as principal or agent;*
 - (iii) an offer made to relatives or close business associates of the issuer;*
 - (iv) an offer made to existing members or debenture holders of a company which relates to shares or debentures of the same class as those held by the persons to whom the offer is made and which cannot be renounced in favour of any other person or persons;*
 - (v) an offer made to any other person who in all the circumstances can properly be regarded as having been selected otherwise than as a member of the public.*
- (c) (i) For the purposes of this Act, a company is a subsidiary of another company where, but only where –*
- (1) that other company –*
 - (a) controls the composition of the board of the company; or*
 - (b) is in a position to exercise, or control the exercise of, more than one half of the maximum number of votes that can be exercised at a meeting of the company; or*
 - (c) holds more than one half of the issued shares of the company, other than shares that carry no right to participate beyond a specified*

amount in a distribution of either profits or capital; or

(d) is entitled to receive more than one half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(2) the company is a subsidiary of a company that is that other company's subsidiary.

(ii) For the purposes of this Act, a company is another company's holding company where, but only where, that other company is its subsidiary.

(iii) In this section the expression "company" includes a body corporate.

(iv) For the purposes of this definition, without limiting the circumstances in which the composition of a company's board is to be taken to be controlled by another company, the composition of the board is to be taken to be so controlled where the other company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all the directors of the company, or such number of directors as together hold a majority of the voting rights at meetings of the board of the company, and for this purpose, the other company is to be taken as having power to make such an appointment where –

(1) a person cannot be appointed as a director of the company without the exercise by the other company of such a power in the person's favour; or

- (2) *a person's appointment as a director of the company follows necessarily from the person being a director or other officer of the other company.*
- (v) *In determining whether a company is a subsidiary of another company –*
- (1) *shares held or a power exercisable by that other company in a fiduciary capacity are not to be treated as held or exercisable by that other company; and*
- (2) *subject to paragraphs (3) and (4), shares held or a power exercisable –*
- (a) *by a person as a nominee for that other company, except where that other company is concerned only in a fiduciary capacity; or*
- (b) *by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,*
- are to be treated as held or exercisable by that other company;*
- (3) *shares held or a power exercisable by a person under the provisions of debentures of the company or of an agency deed for securing an issue of debentures shall be disregarded; and*
- (4) *shares held or a power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable in the manner described in paragraph (3)) are not to be treated as held or exercisable by that other company where –*

- (a) *the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money; and*
- (b) *the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in good faith in the ordinary course of that business.*

(d) *Where a corporation is –*

- (i) *the holding company of another corporation;*
- (ii) *the subsidiary of another corporation; or*
- (iii) *the subsidiary of the holding company of another corporation,*

the first mentioned corporation and that other corporation shall be deemed to be related to each other and each is a related corporation of the other.

SCHEDULE**MINOR AMENDMENTS**

- Section 9 In the first line delete the word *upon* and substitute the word *for*.
- Section 17 In the second line replace *of* with *after*.
- Section 21(b) In the second line replace *of* with *to*.
- Section 63(a)(1) Replace *expanded* with *expended*.
- Section 68(a) In the second line replace *directions* with *director's* and at the end of the subsection add *pursuant to section 65*.
- Section 83 Delete reference to *section 81(c)* and replace with *section 81(b)*.
- Section 84 Delete reference to *section 81(c)* and replace with *section 81(b)*.
- Section 85 Replace *wound* with *wind* and replace *section 76(c)* with *section 76(b)* and replace *section 81(c)* with *section 81(b)*. In paragraph (a) replace *into his custody* with *possession and control of*.