

22. Section 72(9)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
23. Section 79(9)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
24. Section 81(2)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
25. Section 84(5)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
26. Section 85(6)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
27. Section 87(4)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
28. Section 88(5)(b) of the Principal Act is amended by deleting the words, “and company secretary”.
29. Section 90 of the Principal Act is amended by deleting the words, “and company secretaries”, “and company secretary” and “or company secretary”.
30. Section 91(2)(b) of the Principal Act is amended by deleting the words, “or company secretary”.
31. Section 95(5)(b) of the Principal Act is amended by deleting the words, “and company secretary”.

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT

32. Section 99 of the Principal Act is amended by deleting subsection (5) and replacing it with the following:

“(5) For the purposes of this section the term “company” includes an amalgamating company which amalgamated with one or more other amalgamating companies to continue as that company.”.
33. Section 107(8) of the Principal Act is amended by deleting the words, “and company secretary”.
34. Section 112(4)(b) of the Principal Act is amended by deleting the word, “board” and replacing it with the word, “Court”.
35. Section 113 of the Principal Act is amended as follows:
 - (a) in subsection (1) by deleting the words, “board” and replacing it with the word “Court”; and
 - (b) in subsection (2) by deleting the word, “arbitration” and replacing it with the words, “the Court”.
36. Section 122(7)(b) of the Principal Act is amended by deleting the words, “and company secretary”.

Tonga.

No. 4 of 2009



I assent,

GEORGE TUPOU V,

28th October, 2009.

AN ACT

TO AMEND THE COMPANIES ACT 1995

[26th October, 2009]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1. (1) This Act may be cited as the Companies (Amendment) Act 2009.
 - (2) In this Act, the Companies Act 1995 as amended, is referred to as the Principal Act.
 - (3) This Act shall come into force on a day proclaimed by His Majesty in Council.
2. Section 2 of the Principal Act is amended as follows:
 - (a) the definition for “overseas register” is repealed;
 - (b) the definition for “Tongan register” is deleted and replaced with the following:

“”Tongan register” means the register in which the names of Tongan domiciled and overseas domiciled companies are recorded; and”;

and
 - (c) a definition for “signature” is inserted in the appropriate place as follows:

“”signature” means either the name of a person affixed with their own hand on a document, or, in the case of a document submitted to the registry by electronic means, the name of the person affixed to the document by a method deemed acceptable by the Registrar;”.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT

3. Section 13 of the Principal Act is amended as follows:

- (a) in paragraph (d) by inserting the word “and” after the semicolon;
- (b) in paragraph (e) by deleting the semicolon and replacing it with a full stop; and
- (c) by repealing paragraphs (f) and (g).

4. Section 16 of the Principal Act is amended as follows:

- (a) in subsection (1)(f) by inserting the word “and” after the semicolon;
- (b) in subsection (1)(g) by deleting the word “; and”; and replacing it with the words “where the company does not adopt the standard Constitution provided for in the First Schedule.”;
- (c) subsections (1)(c),(d),(e) and (h) are repealed and the remaining paragraphs are renumbered accordingly; and
- (d) subsection (2)(c) is repealed and the remaining paragraphs are renumbered accordingly.

5. A new section 16A is inserted in the Principal Act as follows:

“16A Signed Consent

A company shall keep at its registered office a signed consent by each person named as a director of the company in the prescribed form and shall forthwith produce such consents to the Registrar of Companies when required to do so by written request.”

AMENDMENTS TO PART III OF THE PRINCIPAL ACT

6. Section 21(2) of the Principal Act is amended as follows:

- (a) in paragraph (c) by deleting the words “and company secretaries”; and
- (b) in paragraph (d) by deleting the words “or company secretaries”.

7. Section 22 of the Principal Act is amended by deleting the words “or company secretary” and “company secretary,” wherever appearing.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

8. Section 27(1)(c) of the Principal Act is amended by deleting the words “or company secretary”.

9. Section 29 of the Principal Act is amended as follows:

- (a) in subsection (1) by deleting the words, “shall ensure that its name is clearly stated” and by replacing it with the words, “shall ensure that its name and Tax Identification Number are clearly stated”;
- (b) in subsection (5)(b) by deleting the words “and company secretary”.

AMENDMENTS TO PART V OF THE PRINCIPAL ACT

10. Section 31 of the Principal Act is amended by deleting the words, “, company secretary”.

11. Section 33 of the Principal Act is amended as follows:

- (a) paragraph (a) is deleted and replaced with the following:
 - “(a) in the case of a company registered under Part II, the standard constitution or the document accompanying the application for registration certified by at least one applicant as the company’s constitution;” and
 - (b) in paragraph (b) by deleting the words, “or company secretary”.

12. Section 36(3) of the Principal Act is amended by deleting the words, “and company secretary”.

13. Section 37(6) of the Principal Act is amended by deleting the words “and company secretary”.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT

14. Section 40(1)(a)(i) of the Principal Act is amended by deleting the words “, company secretary.”.

15. Section 47(2) of the Principal Act is amended by deleting the words, “and company secretary”.

16. Section 48(6) of the Principal Act is amended by deleting the words “and company secretary”.

17. A new section 50A is inserted into the Principal Act immediately following section 50, as follows:

“50A Consideration for issue of shares on registration.

A shareholder is not liable to pay or provide any consideration in respect on an issue of shares under section 45 unless:

- (a) the Constitution of the company specifies the consideration to be paid or provided for those shares; or
- (b) the shareholder is liable to pay or provide consideration for those shares pursuant to either a pre-incorporation contract (within the meaning of section 191) or a contract entered into after the registration of the company.”.

18. Section 51(9) of the Principal Act is amended by deleting the words, “and company secretary”.

19. Section 53(6) of the Principal Act is amended by deleting the words, “and company secretary”.

20. Section 62(4) of the Principal Act is amended by deleting the words, “and company secretary”.

21. Section 65(9)(b) of the Principal Act is amended by deleting the words, “and company secretary”.

PART IX OF THE PRINCIPAL ACT

- 61.** Section 173 of the Principal Act is amended by deleting the words, “or company secretary” and “, company secretary”.
- 62.** Section 176(c) of the Principal Act is amended by deleting the words, “or company secretaries”.
- 63.** Section 178 of the Principal Act is amended by deleting the words, “and company secretaries”, “or company secretary” and “and company secretary’s” wherever appearing.
- 64.** Section 179 of the Principal Act is amended by deleting the words, “or company secretary” and “or a company secretary” wherever appearing.
- 65.** Section 182 of the Principal Act is amended by deleting the words, “or company secretary”.
- 66.** Section 185(4) of the Principal Act is amended by deleting the words, “or company secretary”.
- 67.** Section 186 of the Principal Act is amended as follows:
- (a) in subsection (1) by deleting the words, “, the board of a company or a company secretary” and replacing it with the words, “or the board of the company”; and
 - (b) by deleting the words “, the board or a company secretary” and replacing it with the words “or the board” wherever appearing.
- 68.** Section 187(4) of the Principal Act is amended as follows:
- (a) in paragraph (a) by inserting the word “or” after the semicolon;
 - (b) in paragraph (b) by deleting the semicolon and replacing it with a full stop; and
 - (c) by repealing paragraph (c).

AMENDMENTS TO PART X OF THE PRINCIPAL ACT

- 69.** Section 189 of the Principal Act is amended by deleting the words, “and one or more company secretaries” and “, company secretary”.
- 70.** Section 197 of the Principal Act is amended by deleting the words, “and company secretary” and “or company secretary”.
- 71.** Section 198 of the Principal Act is amended as follows:
- (a) by deleting the words, “and company secretaries” and “or company secretary”;
 - (b) in subsection (1):
 - (i) by deleting the words, “the last 10 years” and replacing it with the words, “the last 7 years” wherever appearing; and

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT

- 37.** The Principal Act is amended by deleting the words “and Company Secretaries,” in the title to Part VIII immediately after section 124.
- 38.** Section 125 of the Principal Act is amended by inserting a new subsection (5) as follows:
- “(5) In this Act, “director”, in relation to a company, does not include a receiver.”
- 39.** Section 128 of the Principal Act is amended by deleting sub-sections (2) and (3) and replacing it with the following:
- “(2) In this section:
- “assets” includes property of any kind, whether tangible or intangible; and
- “major transaction”, in relation to a company, means:
- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets of the value of which is more than half the value of the company’s assets before the acquisition;
 - (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company’s assets before the disposition; or
 - (c) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the company’s assets for the transaction.
- (3) Nothing in subsection (2)(b) or (c) applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company’s assets for the purpose of securing the repayment of money or the performance of an obligation.
- (4) In assessing the value of any contingent liability for the purposes of subsection (2)(c), the directors:
- (a) shall have regard to all circumstances that the directors know, or ought to know, affect, or may effect, the value of the contingent liability;
 - (b) may rely on estimates of the contingent liability that is reasonable in the circumstances; and
 - (c) may take account of:

- (i) the likelihood of the contingency occurring; and
 - (ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.
- (5) Nothing in this section applies to a major transaction entered into by a receiver, appointed pursuant to an instrument creating a charge over all or substantially all of the property of a company.”
40. Section 129(1) of the Principal Act is amended by deleting the words, “, company secretary”.
41. The Principal Act is amended by deleting the words “and Company Secretaries,” immediately after section 129.
42. Section 130 of the Principal Act is amended by deleting the words “and company secretaries” and “or company secretary” wherever appearing.
43. Section 132 of the Principal Act is amended by deleting the words “or company secretary”.
44. Section 133 of the Principal Act is amended by deleting the words “and company secretaries” and “or company secretary”.
45. Section 136 of the Principal Act is amended by deleting the words “and company secretary’s” and “or company secretary” wherever appearing.
46. Section 137 of the Principal Act is amended as follows:
- (a) by deleting the words, “or company secretary” wherever appearing;
 - (b) in subsection (1)(a):
 - (i) by deleting “, a company secretary”; and
 - (ii) by deleting “the company secretary’s” and replacing it with “his”; and
 - (c) in subsection (1)(d) by deleting “, company secretary,” and “, company secretary’s”.
47. Section 138 of the Principal Act is amended by deleting the words, “or company secretary” and “, company secretary” wherever appearing.
48. Section 139 of the Principal Act is amended by deleting the words, “or company secretary”, “or company secretary’s and “company secretary,” wherever appearing.
49. Section 140 of the Principal Act is amended by deleting the words, “or company secretary” and “or company secretary’s” wherever appearing.
50. Section 142 of the Principal Act is amended as follows:
- (a) in paragraph (a) by inserting the word “or” after the semicolon;
 - (b) by repealing paragraph (b); and
 - (c) by renumbering the subsequent paragraph appropriately.

51. Section 143 of the Principal Act is amended as follows:
- (a) by deleting the words, “or company secretary”;
 - (b) in subsection (1) by deleting “(1)”; and
 - (c) by repealing subsection (2).
52. Section 144 of the Principal Act is amended by deleting the words, “or company secretary” and “, company secretary” wherever appearing.
53. Section 145 of the Principal Act is amended by deleting the words, “or company secretary” wherever appearing.
54. Section 147 of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary” wherever appearing.
55. Section 148 of the Principal Act is amended by deleting the words, “and company secretaries”, “or company secretary” and “, company secretary” wherever appearing.
56. Section 158 of the Principal Act is amended by deleting the words, “or company secretary”.
57. Section 160 of the Principal Act is amended as follows:
- (a) by deleting the words, “, company secretary” and “or company secretary” wherever appearing; and
 - (b) in subsection (9) by repealing the definition of “company secretary”; and
58. The Principal Act is amended by repealing the words “Company Secretaries” immediately after section 160.
59. The Principal Act is amended by inserting a new section 160A as follows:
- “160A Company Secretary**
- (1) A company may have a secretary, who shall be appointed by the board of the company.
 - (2) Every secretary of a company shall be a natural person.
 - (3) Where the office of the secretary is vacant, or for any reason the secretary is not capable of acting, anything required or authorised to be done by or in relation to the secretary, may be done, by a person authorised generally or specifically for the purpose by the board of the company.
 - (4) A secretary of a company shall have only such rights, powers, and duties in relation to the company as are given to him by the constitution or board of the company.”
60. Sections 161, 162, 163, 164, 165, 166, 167, 168, 169, 170 and 171 of the Principal Act are repealed.

into or effected before or after the time at which the interim liquidator was appointed, that act or transaction users, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.”.

96. Section 257(1)(b) of the Principal Act is amended by deleting the words, “and company secretaries”.
97. Section 259(2) of the Principal Act is amended by deleting the words, “, company secretary”.
98. Section 261(4)(a) of the Principal Act is amended, in the English version only, by deleting the words, “with the period” and replacing it with the words, “within the period”.
99. A new section 267A is inserted into the Principal Act as follows:

“267A Report by liquidator

- (1) A liquidator of a company who considers that an offence that is material to the liquidation has been committed by company or any director of the company against this Act shall report that fact to the Registrar.
- (2) A report made under subsection (1), and any communications between the liquidator and Registrar relating to that report, are protected by absolute privilege.”

100. A new section 269A is inserted in the Principal Act as follows:

“269A Assigning of right to sue

- (1) The liquidator may, if the Court has first approved it, assign any right to sue that is conferred on the liquidator by this Act.
- (2) The application or approval may be:
- (a) made by the liquidator or the person to whom it is proposed to assign the right to sue; and
- (b) opposed by a person who is a defendant to the liquidator’s action, if already begun, or a proposed defendant.”

101. Section 270 of the Principal Act is amended, as follows:

- (a) in subsection (1) by deleting the words, “, company secretary”;
- (b) in subsection (2):
- (i) by repealing paragraph (b); and
- (ii) by renumbering the remaining paragraphs appropriately:
- (c) by inserting a new subsection (3A) as follows:
- “(3A) Without limiting subsection (3)(a) of the section, a person may be required to attend on the liquidator under the subsection at a meeting of creditors of the company.”; and

- (ii) by deleting the words, “the last 10 completed accounting periods of the company” and replacing it with the words, “the last 7 completed accounting periods” wherever appearing; and
- (c) in subsection (2) by deleting the words, “to 10” and replacing it with the words “to 7” wherever appearing.

72. Section 199(3) of the Principal Act is amended by deleting the words, “or company secretary”.

73. Section 200 of the Principal Act is amended by deleting the words, “and company secretaries”, “or company secretary’s” and “or company secretary” wherever appearing.

AMENDMENTS TO PART XI OF THE PRINCIPAL ACT

74. Section 203(4) of the Principal Act is amended by deleting the words, “or company secretary”.

75. Section 204(3)(b) of the Principal Act is amended by deleting the words, “or company secretary”.

76. Section 205 of the Principal Act is amended as follows:

- (a) by repealing subsections (5), (6) and (7);
- (b) by renumbering subsection (8) as subsection (5); and
- (c) inserting new subsections (6) and (7) as follows:

“(6) An auditor may resign at any time by giving written notice to the board of the company, and the company shall, as soon as practicable, notify its shareholders of the auditor’s resignation.

- (7) If a company fails to comply with subsection (6), every director of the company commits an offence and is liable on conviction to the penalty set out in section 377(2)(i).”.

77. Section 208(2)(a) and (b) of the Principal Act is amended by deleting the words, “company secretary”.

78. Section 215 of the Principal Act is amended by deleting the words, “, company secretary” and “or company secretary” wherever appearing.

79. Section 216(2) of the Principal Act is amended by deleting the words, “or company secretary”.

AMENDMENTS TO PART XII OF THE PRINCIPAL ACT

80. Section 217(2) of the Principal Act is amended by deleting the words, “or company secretary”.

81. Section 218(3) of the Principal Act is amended by deleting the words, “or company secretary”.

82. Section 219(2) of the Principal Act is amended by deleting the words, “or company secretary”.

83. Section 220(1) of the Principal Act is amended as follows:

- (a) by repealing paragraphs (g) and (k);
- (b) by renumbering the subsequent paragraphs appropriately; and
- (c) deleting the words “or company secretaries” and “and one company secretary” wherever appearing.

84. Section 223 of the Principal Act is amended as follows:

- (a) by deleting subsection (3) and replacing it with the following:
 - “(3) The annual return shall be signed by hand or by electronic means by a director of the company or by a law practitioner or accountant authorised by the company for that purpose.”; and
- (b) deleting subsection (10) and replacing it with the following:
 - “(10) If the board of the company fails to comply with subsection (1) or subsection (2), during the month allocated, the Registrar by written notice shall require the company to comply within 6 months, failing which the company shall be removed from the register provided always that the Registrar may reinstate such company upon payment of the prescribed fee.”.

85. Section 224 of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary”.

86. Section 225(2)(b) of the Principal Act is amended by deleting the words, “or company secretary”.

87. Section 227(2)(b) of the Principal Act is amended by deleting the words, “or company secretary”.

AMENDMENTS TO PART XIII OF THE PRINCIPAL ACT

88. Section 229(1) of the Principal Act is amended as follows:

- (a) by repealing paragraph (d);
- (b) by renumbering the subsequent paragraphs appropriately; and
- (b) by deleting the words, “or company secretary”.

89. Section 230(3)(f) of the Principal Act is amended by deleting the words, “and company secretaries”.

90. Section 232(f) of the Principal Act is amended by deleting the words, “or company secretary” wherever appearing.

AMENDMENT TO PART XIV OF THE PRINCIPAL ACT

91. Section 238(2)(b)(v) of the Principal Act is amended by deleting the words, “or company secretary”.

AMENDMENTS TO PART XV OF THE PRINCIPAL ACT

92. Section 245(5) of the Principal Act is amended by deleting the words, “or company secretary”.

93. Section 246(3) of the Principal Act is amended by deleting the words, “or company secretary”.

AMENDMENTS TO PART XVI OF THE PRINCIPAL ACT

94. Section 250 of the Principal Act is amended as follows:

- (a) in subsection (2)(c) by deleting the words, “, company secretary”.
- (b) by inserting new subsections (6), (7) and (8) as follows:
 - “(6) This subsection applies if an application has been filed for the appointment of a liquidator of a company by the court under section 250(2)(c).
 - (a) A liquidator of the company may only be appointed under section 250(2)(a) or (b) if the liquidator is appointed within 10 working days after service on the company of the application.
 - (b) If a liquidator is appointed under section 250(2)(a) or (b), the creditor who filed the application referred to in subsection (1) may apply to the Court under section 292 (5) for the review of his appointment as if the words “successor to a liquidator” in section 292(5) read “liquidator”.
 - (7) If a liquidator is appointed under section:
 - (a) 250(2)(a), the shareholders shall record in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution was passed;
 - (b) 250(2)(b), the board of the company shall record in the instrument appointing the liquidator the date on which, and the time at which, the liquidator was appointed; or
 - (c) 250(2)(c), the court shall record in the order appointing the liquidator the date on which, and the time at which, the order was made.
 - (8) If any question arises as to whether on the date on which a liquidator was appointed an act was done or transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.”.

95. Section 255 of the Principal Act is amended by inserting new subsections (4), (5) and (6) as follows:

- “(4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order of appointing that interim liquidator is made.
- (5) The Court shall record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.
- (6) If any question arises as to whether on the date on which an interim liquidator was appointed an act was done or a transaction was entered

132. Section 371(1) of the Principal Act is amended as follows:

- (a) in paragraph (a)(i) by deleting the words, “or company secretary”;
- (b) in paragraph (a)(iii) by deleting the word “; and” and replacing it with the following:

“, the Registrar may request information from the company and its directors, including requesting copies of any relevant documents in possession or under control of the company or any of its directors; and”;
- (c) in paragraph (b) by deleting the words, “if, in the Registrar’s opinion, it is in the public interest – do any of the following –” and replacing it with the words, “if, after acting pursuant to paragraph (a), the Registrar has reason to believe that a company or a director of a company is not in compliance with this Act, then the Registrar may seek a court order empowering him to do any of the following:”.

AMENDMENTS TO PART XXI OF THE PRINCIPAL ACT

133. Section 377 of the Principal Act is amended as follows:

- (a) by deleting the words “and company secretaries”, “and company secretaries” and “or company secretary”; and
- (b) in subsection (2);
 - (i) by deleting paragraph (i) and inserting a new paragraph (i) as follows:

“(i) section 205(7)(a) and (9) which relate to the appointment and resignation of an auditor;”; and
 - (ii) by inserting a new paragraph (ra) as follows:

“(ra) section 270(6A) (which relates to persons required to attend on the liquidator at a meeting of creditors);”.

134. Section 378 of the Principal Act is amended as follows:

- (a) by deleting the words “or company secretaries”, “or company secretary”; and
- (b) by repealing subsection (2)(l).

135. Section 380 of the Principal Act is amended by deleting the words, “or company secretary” wherever appearing.

136. Section 381 of the Principal Act is amended by deleting the words, “, company secretary” wherever appearing.

137. Section 382 of the Principal Act is amended by deleting the words, “company secretary,”.

138. Section 383 of the Principal Act is amended by deleting the words, “company secretary,”.

(d) by inserting a new subsection (6A) as follows:

“(6A) A person who fails to comply with a notice given under the section commits an offence and is liable on conviction to the penalty set out in section 377(2).”.

102. Section 283(1) of the Principal Act is amended by deleting the words, “, company secretary”.

103. Section 289(1) of the Principal Act is amended by deleting the words, “, company secretary” and “or company secretary”.

104. Section 292 of the Principal Act is amended by deleting the words, “, company secretary” wherever appearing.

105. Section 293(1) of the Principal Act is amended by deleting the words, “or company secretary”.

106. Section 295(1)(d) of the Principal Act is amended by deleting the words, “or company secretary”.

107. Section 307 of the Principal Act is amended by deleting the words, “, company secretaries” and “or company secretary” wherever appearing.

108. Section 308 of the Principal Act is amended by deleting the words, “or company secretary” wherever appearing.

109. Section 309 of the Principal Act is amended by deleting the words, “directors, former directors, company secretaries and former company secretaries of the company” and replacing it with the words, “directors or former directors of the company”.

110. Section 310 of the Principal Act is amended by deleting the words “company secretary,” wherever appearing.

111. Section 319(5) of the Principal Act is amended by deleting the words “or company secretary”.

112. Section 324(1)(c) of the Principal Act is amended by deleting the words, “, company secretaries”.

AMENDMENTS TO PART XVII OF THE PRINCIPAL ACT

113. Section 326 of the Principal Act is amended by deleting the word “signed” and replacing it with the words, “is filed”.

114. Sections 327 of the Principal Act is amended as follows:

- (a) in subsection (1)(b):
 - (i) by deleting sub-paragraph (ii) and inserting the following:

“(ii) the company has failed to file its annual return within a period of six months after the annual return is due.”;
 - (ii) by repealing sub-paragraphs (iii) and (iv); and

- (b) (i) by repealing sub-section (4); and
(ii) by renumbering the subsequent subsection appropriately.
- 115.** Section 328 of the Principal Act is repealed.
- 116.** Section 335 of the Principal Act is amended by deleting the words, “company secretaries,” and “, company secretary”.
- 117.** Section 336 of the Principal Act is repealed.
- 118.** Section 337(2)(a) of the Principal Act is amended by deleting the words, “or company secretary,”.
- 119.** Section 338(2)(a)(i) of the Principal Act is amended by deleting the words, “or company secretary”.
- 120.** Section 339 of the Principal Act is amended as follows:
- (a) in subsection (1), by deleting the word “signed” and replacing it with the words “is filed”; and
- (b) by inserting a new subsection (1A) as follows:
- “(1A) If a company has been removed from the register pursuant to section 327(1)(b) then, before the company can be restored to the register, the company shall file with the Registrar all past due company returns and pay all outstanding fees and penalties.”.

AMENDMENTS TO PART XVIII OF THE PRINCIPAL ACT

- 121.** Section 342(5)(b) of the Principal Act is amended by deleting the words, “or company secretary”.
- 122.** Section 343(6)(b) of the Principal Act is amended by deleting the words, “or company secretary”.
- 123.** Section 345(2) of the Principal Act is amended by:
- (a) deleting the words, “and company secretaries” from paragraph (b); and
- (b) paragraph (d) is deleted and replaced with:
- “(d) have attached evidence of incorporation of the overseas company including proof of good standing of incorporation which shall not be more than 30 days older than the date of filing of the application for the registration under this Act;”.
- 124.** Section 346 of the Principal Act is amended by deleting the words “overseas register” and replacing it with the words “Tongan register” wherever appearing.
- 125.** Section 348 of the Principal Act is amended by deleting the words, “or company secretaries” and “or company secretary”.

- 126.** Section 349 of the Principal Act is amended as follows by deleting subsection (6) and inserting new subsections (6) and 7 as follows:
- “(6) If an overseas company fails to comply with the provisions of subsection (1) hereof within a period of six months from the date allocated, the Registrar shall remove the company from the register.”
- “(7) If a company has been removed from the register pursuant to section 349(6), then before the overseas company can be restored to the Tongan register, the company shall file with the Registrar all past due annual returns and pay all outstanding fees and penalties.”.
- 127.** Section 352(2) of the Principal Act is amended by deleting the words, “or company secretaries” and “or company secretary”.

AMENDMENTS TO PART XX OF THE PRINCIPAL ACT

- 128.** Section 367 of the Principal Act is amended as follows:
- (a) by deleting subsection (1) and inserting a new subsection (1) as follows:
- “(1) The Registrar shall ensure that a register of companies registered under Parts II, XVIII, and XIX or re-registered under this Act in accordance with the Tenth Schedule, as the case may be is kept in Tonga or in such places as the Registrar determines.”;
- (b) (i) by repealing subsection (3); and
(ii) renumbering the subsequent subsection appropriately; and
- (c) in the new subsection (3) by deleting the words “and the overseas register”.
- 129.** Section 368 of the Principal Act is amended as follows:
- (a) in subsection (1)(a) by deleting the words “or the overseas register, as the case may be”; and
- (b) by deleting the words “or the overseas register” wherever appearing.
- 130.** Section 368A of the Principal Act is repealed.
- 131.** Section 369 of the Principal Act is amended as follows:
- (a) in subsection (1) by deleting the words “or overseas register”;
- (b) by deleting the words “or the overseas register” wherever appearing; and
- (c) at the end of subsection 2(e):
- (i) in the English version only, by deleting the colon and replacing it with a full stop; and
- (ii) repealing the proviso.

**AMENDMENTS TO THE FOURTH SCHEDULE
OF THE PRINCIPAL ACT**

176. Clause 7 of the Fourth Schedule of the Principal Act is amended by deleting subclause (3) and replacing it with the following:

“(3) If no person has been authorised to receive and count postal votes and if the company is in liquidation, the liquidator, is deemed to be so authorised.”.

AMENDMENTS TO SIXTH SCHEDULE OF THE PRINCIPAL ACT

177. The Sixth Schedule of the Principal Act is amended as follows:

(a) by deleting clause 8 and inserting the following:

“8. The claims listed in each of clauses 2, 3, 4, and 5 rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.”; and

(b) (i) by repealing clause 9; and

(ii) by renumbering the subsequent clauses appropriately.

**AMENDMENTS TO SEVENTH SCHEDULE
OF THE PRINCIPAL ACT**

178. Clause 6 of the Seventh Schedule of the Principal Act is amended by deleting the words, “or company secretary”.

AMENDMENTS TO EIGHTH SCHEDULE OF THE PRINCIPAL ACT

179. Clause 1 of the Eighth Schedule of the Principal Act is amended by deleting the words, “or company secretaries” and “and company secretaries”.

AMENDMENTS TO NINTH SCHEDULE OF THE PRINCIPAL ACT

180. Clause 2 of the Ninth Schedule of the Principal Act is amended by deleting the words, “and one company secretary”;

181. Clause 4(1)(b) of the Ninth Schedule of the Principal Act is amended by deleting the words, “and one company secretary”.

182. Clause 8 of the Ninth Schedule of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary” wherever appearing.

183. Clause 9 of the Ninth Schedule of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary”.

184. Clause 10 of the Ninth Schedule of the Principal Act is amended by deleting the words, “or company secretary” wherever appearing.

AMENDMENTS TO TENTH SCHEDULE OF THE PRINCIPAL ACT

185. The Principal Act is amended by repealing the Tenth Schedule and inserting the following new clauses:

139. Section 384 of the Principal Act is amended by deleting the words, “or company secretary”.

140. Section 386 of the Principal Act is amended by deleting the words, “or company secretary”.

141. Section 387 of the Principal Act is amended as follows:

(a) by deleting the words, “and company secretaries” and “or company secretary” wherever appearing; and

(b) in subsection (1):

(i) by repealing paragraph (b); and

(ii) renumbering the subsequent paragraphs appropriately.

142. Section 388 of the Principal Act is amended by deleting the words, “or company secretary”.

143. Section 389 of the Principal Act is amended as follows:

(a) by deleting the words, “or company secretary” wherever appearing;

(b) by subsection (4):

(i) by repealing paragraph (a); and

(ii) by deleting “– (b)”;

(c) in subsection (6) by deleting the words, “director, promoter” and replacing it with the words, “director or promoter”.

AMENDMENTS TO PART XXII OF THE PRINCIPAL ACT

144. Section 391(1)(a) of the Principal Act is amended by deleting the words, “or company secretary”.

145. Section 393(1)(a) of the Principal Act is amended by deleting the words, “or company secretary”.

AMENDMENTS TO FIRST SCHEDULE OF THE PRINCIPAL ACT

146. Clause 3 of the First Schedule of the Principal Act is amended by deleting the words “shareholders, directors and company secretary” and replacing it with the words “shareholders or directors”.

147. Clause 6(a)(i) of the First Schedule of the Principal Act is amended by deleting the words, “, company secretary”.

148. Clause 31 of the First Schedule of the Principal Act is amended by deleting the words, “and company secretaries” and “and company secretary”.

149. Clause 51(1) of the First Schedule of the Principal Act is amended by deleting the words, “, company secretary”.

150. Clause 56 of the First Schedule of the Principal Act is amended by repealing subclause (3).

- 151.** The heading, “Part V - Directors and Company Secretaries” in the First Schedule of the Principal Act, in the English version only, is amended by deleting the words “and Company Secretaries”.
- 152.** Clause 64 of the First Schedule of the Principal Act is amended by repealing subclause (2) and inserting the following:
“(2) In this clause, the term “major transaction” in relation to the company has the meaning appearing in section 128 of the Act.”
- 153.** Clause 65(1) of the First Schedule of the Principal Act is amended by deleting the words, “, company secretary”.
- 154.** Clause 66 of the First Schedule of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary” wherever appearing.
- 155.** Clause 67 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary”.
- 156.** Clause 68 of the First Schedule of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary”.
- 157.** Clause 71 of the First Schedule of the Principal Act is amended by deleting the words, “and company secretary’s” and “or company secretary” wherever appearing.
- 158.** Clause 72 of the First Schedule of the Principal Act is amended as follows:
- (a) in subsection (1)(a) by deleting the words “the company secretary’s” and replacing it with the word “his”; and
 - (b) by deleting the words, “or company secretary”, “, a company secretary”, “company secretary,” and “, company secretary’s” wherever appearing.
- 159.** Clause 73 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary” and “, company secretary” wherever appearing.
- 160.** Clause 74 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary”, “or company secretary’s” and “, company secretary” wherever appearing.
- 161.** Clause 75 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary”.
- 162.** Clause 76 of the First Schedule of the Principal Act is amended as follows:
- (a) by deleting the words, “or company secretary”;
 - (b) repealing subclause (2); and
 - (c) by deleting “(1)”.

- 163.** Clause 77 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary” and “, company secretary” wherever appearing.
- 164.** Clause 78 of the First Schedule of the Principal Act is amended by deleting the words, “and company secretaries” and “or company secretary” .
- 165.** Clause 79 of the First Schedule of the Principal Act is amended by deleting the words, “and company secretaries”, “or company secretary” and “, company secretary”.
- 166.** Clause 87 of the First Schedule of the Principal Act is amended by deleting the words “or company secretary”.
- 167.** Clause 88 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary or former company secretary”.
- 168.** Clause 89 of the First Schedule of the Principal Act is amended by deleting the words, “, company secretary”.
- 169.** Clauses 90, 91, 92, 93, 94, 95, 96 and 97 of the First Schedule of the Principal Act are repealed.
- 170.** Clause 99 of the First Schedule of the Principal Act is amended by deleting the words, “or a company secretary”, “and company secretary” and “and company secretaries” wherever appearing.
- 171.** Clause 106 of the First Schedule of the Principal Act is amended by deleting the words, “and one or more company secretaries”.
- 172.** Clause 109 of the First Schedule of the Principal Act is amended by deleting the words, “or company secretary”.
- 173.** Clause 113 of the First Schedule of the Principal Act is amended by deleting the words, “, company secretary”.

AMENDMENTS TO THE THIRD SCHEDULE OF THE PRINCIPAL ACT

- 174.** Paragraph (g) of the Third Schedule of the Principal Act is amended by deleting the words, “and company secretaries”.
- 175.** The Third Schedule of the Principal Act is amended as follows:
- (a) by repealing paragraph (i);
 - (b) by renumbering the subsequent paragraphs appropriately;
 - (c) at the end of paragraph (l), by deleting the full stop and replacing it with a semicolon; and
 - (c) inserted a new paragraph (m) as follows:
“(m) the Tax Identification Number of the company.”.

- “(1) Every existing company shall apply for re-registration under this Act no later than 6 months from the date of the commencement of this Act.
- (2) Any existing company that does not re-register under this Act pursuant to subsection (1) shall be removed from the register.
 - (3) The re-registration of an existing company under this section does not:
 - (i) create a new legal entity;
 - (ii) affect the property, rights, liabilities or obligations of the company; or
 - (iii) affect proceedings by or against the company.
 - (4) An application for re-registration of an existing company shall be made to the Registrar in the prescribed form.
 - (5) If the company does not appear on the existing register, the company shall provide evidence to the Registrar that the company is in existence in order to re-register. A certificate of incorporation previously issued by the Registrar shall serve as conclusive evidence of the existence of the company to be re-registered.
 - (6) The application for re-registration of a company shall specify:
 - (i) the existing name and registration number of the company;
 - (ii) whether the rules of the constitution differs from the standard constitution provided for in the First Schedule;
 - (iii) the full name, residential address, and postal address of every director of the company;
 - (iv) whether each person named as a director of the company has consented to act as a director of the company;
 - (v) the full name of every shareholder of the proposed company, and the number of shares issued to every shareholder;
 - (vi) the registered office of the proposed company; and
 - (vii) the postal address of the company, which may be the registered office or any other postal address.
 - (7) An application for re-registration shall be accompanied by a copy of the constitution if it differs from the standard constitution provided for in the First Schedule.
 - (8) As soon as the Registrar receives an application for re-registration that complies with subsection (6) the Registrar shall:
 - (i) if the company is not entered on the register, enter it on the register; and

- (ii) issue a certificate of re-registration in respect of the company in the prescribed form.
- (9) A certificate of re-registration of a company issued under subsection (8)(ii) is conclusive evidence that all the requirements as to the re-registration have been satisfied.
- (10) For the purposes of this Schedule “company” includes overseas companies.

Passed by the Legislative Assembly on this 26th day of October, 2009.